Volume XLV] March, 1930 [Number 1

POLITICAL SCIENCE QUARTERLY

WAR POWERS OF THE PRESIDENT OF THE UNITED STATES WITH SPECIAL REFERENCE TO THE BEGINNING OF HOSTILITIES

I. General Powers

THE recent acceptance of the Kellogg Pact by the nations of the world has focused attention upon the powers of the President of the United States with reference to the formulation of American foreign policy. The rôle of Congress in this program for world peace has been a definitely secondary one: a mere acquiescence in the decision already reached by the Executive. But if the President, through his control of foreign relations, can effect international peace, he can also involve the United States in such difficulties with other nations that war will necessarily result despite the anxious efforts of Congress to preserve peace.

The much-vaunted doctrine of the separation of powers, a doctrine hailed by our founding fathers as a political panacea *par excellence,* was not given rigid application in the Constitution of the United States, and at times it has been difficult exactly to delimit the respective jurisdictions of the executive and legislative departments. In recent years the rôle of President of the United States has assumed a heightened importance, and to many acute observers it appears as though Congress were being pushed farther and farther into the background. America's increasing interest in the region of the Caribbean has demanded effective governmental support which has been extended mainly through the executive department.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In Haiti, in Santo Domingo and in Nicaragua, America investors have looked not to Congress but to the President for action in their behalf. The despatch of American warships and the landing of American marines seem so closely related to actual warfare that many opponents of presidential action have vigorously asserted that the American Executive has usurped a power properly belonging only to Congress, which is the war-making power. It is the purpose of this article to discuss the overlapping jurisdictions of the executive and legislative departments, and to examine with particular care the war powers of the President with special reference to the beginning of hostilities.

In the Constitution of the United States the legislative and judicial powers are carefully enumerated. With respect to the powers of the Executive the language is very vague, and this lack of express limitations "has led to some difference of opinion as to whether the executive power vested in the President by the Constitution is defined and limited by the following specified powers, or whether it includes other powers not enumerated but naturally executive in character".[1] In commenting upon the phraseology of Article II, a distinguished Virginia publicist observed as follows:

> The most defective part of the Federal Constitution, beyond all question, is that which relates to the executive department. It is impossible to read that instrument, without being forcibly struck with the loose and unguarded terms in which the powers and duties of the President are pointed out. So far as the legislature is concerned, the limitations of the Constitution are, perhaps, as precise and strict as they could safely have been made; but in regard to the executive, the convention appears to have studiously selected such loose and general expressions, as would enable the President, by implication and construction, either to neglect his duties, or to enlarge his powers.[2]

[1] C. A. Berdahl, *War Powers of the Executive in the United States* (Urbana, 1921), pp. 11-12.

[2] Abel P. Upshur, *A Brief Enquiry into the True Nature and Character of our Federal Government* (Philadelphia, 1863), p. 116.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In this same regard an eminent American historian, James Ford Rhodes, remarks:

> In the provisions conferring the powers and defining the duties of the executive the flexible character of the Constitution is shown in another way. Everything is clearly stated, but the statements go not beyond the elementary. . . . On account of the elementary character of the article of the Constitution on the powers of the President, there is room for inference, a chance for development, and an opportunity for a strong man to imprint his character upon the office.[1]

In his lectures on *Constitutional Government in the United States,* Woodrow Wilson, then president of Princeton University, discussed the importance of the presidential office:

> The makers of the Constitution constructed the federal government upon a theory of checks and balances which was meant to limit the operation of each part and allow to no single part or organ of it a dominating force; but no government can be successfully conducted upon so mechanical a theory. . . . The trouble with the theory is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. . . . The presidency has been one thing at one time, another at another, varying with the man who occupied the office and with the circumstances that surrounded him. . . . Greatly as the practice and influence of the Presidents has varied, there can be no mistaking the fact that we have grown more and more inclined from generation to generation to look to the President as the unifying force in our complex system, the leader both of his party and of the nation. . . . His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. . . . If he lead the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make it. . . . The President is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the limit; and if Congress be overborne by him, it will be no fault of the makers of the Constitution,—

[1] James Ford Rhodes, *Historical Essays* (New York, 1909), p. 204.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

it will be from no lack of constitutional powers on its part, but only because the President has the nation behind him, and Congress has not.[1]

President Roosevelt's conception of the extent of the executive power was even broader. In his *Autobiography* his theory of presidential prerogatives was outlined as follows:

> The most important factor in getting the right spirit in my administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its Constitutional powers. My view was that every executive officer, and above all every executive officer in high position, was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of the departments. I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition.[2]

The Roosevelt theory as to the extent of executive power has been sharply questioned by leading publicists who maintain that the President's powers are definitely limited and defined in the Constitution. In this regard the following excerpt from Dr. Frank J. Goodnow's treatise on the *Principles of Constitutional Government* is pertinent:

[1] Woodrow Wilson, *op. cit.* (New York, 1916), pp. 88-89.

[2] Theodore Roosevelt, *op. cit.* (New York, 1916), pp. 139-40.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> In the first place, the American Executive — governor or President—is different from the British Crown, an authority of enumerated powers. The courts when called upon in specific cases to decide whether he has the power to act or not have held that the general statement that "the executive power" shall be vested in him has little if any legal effect, and that for the most part it is to be explained by the powers which are later specifically mentioned.
>
> The executive power in the United States is, therefore, quite different from what it is in England. The holder of it is for the most part merely to exercise the powers which have clearly been given to him by the Constitution, and the Constitution itself is regarded as a grant of power not otherwise possessed, rather than as a limitation of power already in existence.[1]

One of the clearest discussions of the limitations of the powers of the President is that contained in the lectures given by ex-President W. H. Taft in Columbia University in 1915-16, and later published under the title, *Our Chief Magistrate and His Powers*. After contrasting the various views relative to presidential powers, Mr. Taft comments as follows:

> The true view of the Executive functions is, as I conceive it, that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise. Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in the public interest, and there is nothing in the Neagle case and its definition of a law of the United States, or in other precedents, warranting such an inference. The grants of Executive power are necessarily in general terms in order not to embarrass the Executive within the field of action plainly marked for him, but his jurisdiction must be justified and vindicated by affirmative constitutional or statutory provision, or it does not exist.[2]

[1] F. J. Goodnow, *op. cit.* (New York, 1916), pp. 88-89.

[2] W. H. Taft, *op. cit.* (New York, 1916), pp. 139-40.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Mr. Taft's viewpoint was in accord with the decision of the Supreme Court in the case of the *Floyd Acceptances*. Mr. Justice Miller, in delivering the opinion of the court, remarked in part as follows:

> Whenever negotiable paper is found in the market purporting to bind the government, it must necessarily be by the signature of an officer of the government, and the purchaser of such paper, whether the first holder or another, must at his peril, see that the officer had authority to bind the government. When this inquiry arises, where are we to look for the authority of the officer? The answer, which at once suggests itself to one familiar with the structure of our government, *in which all power is delegated, and is defined by law, constitutional or statutory, is, that to one or both of these sources we must resort in every instance.—We have no officer in this government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority.*[1]

II. NATURE AND EXTENT OF THE WAR POWERS

If, under the Constitution, the limits of the executive power are open to question, it is especially true that the scope and exercise of the war powers have been subject to much controversy. As Professor Garner well says: "In time of war the domain of the executive power constitutes a sort of 'dark continent' in our jurisprudence, the boundaries of which are not determined".[2] In order to carry on a war to a successful conclusion the war powers have to be given a very liberal interpretation. In a speech delivered in the House of Representatives, May 25, 1836, John Quincy Adams commented upon the extent of the war powers as follows:

> The *war power* is limited only by the laws and usages of nations. This power is tremendous; it is strictly constitutional, but it breaks down every barrier so anxiously erected for the protection of liberty, of property, and of life. . . . The powers

[1] 7 *Wall.* (December, 1868), pp. 676-77. Italics are the author's.

[2] James W. Garner, "Le Pouvoir Exécutif en Temps de Guerre aux États-Unis," *Revue du Droit et de la Science Politique*, Jan.-Mar. 1918, p. 13.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of war are all regulated by the laws of nations, and are subject to no other limitations.[1]

During the course of the Civil War when the question arose as to the confiscation of property belonging to those in armed opposition to the Government of the United States, Charles Sumner warmly supported the proposed legislation which finally resulted in the comprehensive act of July 17, 1862. The basis for such legislation Sumner found in the war powers which necessarily belonged to the national government. Their extensive nature he outlined in the following manner:

> Pray, Sir, where in the Constitution is any limitation of the War Powers? Let Senators who would limit them mention a single section, line, or phrase, which even hints at any limitation. . . . The War Powers are derived from the Constitution, but, when once set in motion, are without any restraint from Constitution; so that what is done in pursuance of them is at the same time *under* the Constitution and *outside* the Constitution. It is under the Constitution in its beginning and origin; it is outside the Constitution in the latitude with which it is conducted; but whether under the Constitution or outside the Constitution, all that is done in pursuance of the War Powers is constitutional. . . . Once begun, war is a law unto itself,—or, in other words, it has a law of its own, which is part of itself. As just in proportion as you seek to moderate it by constitutional limitations do you take from war something of its efficiency.[2]

The Supreme Court took practically this view in the case of *Miller v. United States*. In upholding the same Confiscation Acts for which Charles Sumner spoke, the Court said:

> If the statutes were not enacted under the municipal power of Congress to legislate for the punishment of crimes against the sovereignty of the United States, if on the contrary, they are an exercise of the war powers of the government, it is clear they are not affected by the 5th and 6th Amendments. . . . Of

[1] *Annals of Congress*, vol. XII, pt. IV (24th Cong., 1st sess.), pp. 4038-39.

[2] Charles Sumner, *Works* (Statesman edition, Boston, 1900), vol. IX, pp. 131 *et seq.*; see also J. G. Randall, *Constitutional Problems under Lincoln* (New York, 1926), pp. 275-315.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted.[1]

In this case the dissenting justices were also convinced of the extensive character of the war powers. They also observed that "the war powers of the government have no express limitations in the Constitution, and the only limitation to which their exercise is subject is the law of nations."[2]

Although there is wide agreement as to the extent of the war powers, yet there has been sharp disagreement as to whether the exercise of these powers is vested in the President or in Congress. In June, 1862, when the Confiscation Acts already referred to were before Congress, Senator Browning and Senator Sumner voiced views diametrically different: Browning believed that the President had complete authority to determine upon the measures necessary to meet the war emergency, while Sumner took the opposite viewpoint. In the course of the debate Browning remarked as follows:

> A very important part of the Senator's speech, and which appears to me to be among the most heterodox, and dangerous, and indefensible doctrines he puts forward, are ranged under the inquiry, "what are the rights against enemies which Congress may exercise in war?" To this inquiry the Constitution gives a very explicit answer. They have already been enumerated. . . . These enumerations . . . declare all the powers "which Congress may exercise in war": and these it may exercise just as well in peace as in war. Congress has no powers which are peculiar to a state of war—none which are "dormant in peace and aroused into activity only by the breath of war." . . . It is not true that Congress may assume and exercise all the active war powers in the actual prosecution of war. The Constitution invests it with no such prerogative. It is not true that Congress may decide upon the measures demanded by military necessities and order them to be enforced. . . . These necessities can be determined only by the military commander, and to him the Constitution has entrusted the prerogative of

[1] 11 *Wall.* (1870), pp. 268, 304-305.

[2] *Ibid.*, p. 315.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

judging of them. . . . It is not a legislative, but an executive function, and Congress has nothing to do with it. Congress can "raise and support", but cannot command armies.[1]

Senator Sumner directly challenged the viewpoint expressed by Senator Browning, and, as the following excerpt indicates, he strongly presented the argument for Congressional control of the war powers.

> There are Senators who claim these vast War Powers for the President, and deny them to Congress. The President, it is said, as commander-in-chief, may seize, confiscate, and liberate under the Rights of War, but Congress cannot direct these things to be done. Pray, Sir, where is the limitation upon Congress? Read the text of the Constitution, and you will find its powers vast as all the requirements of war. There is nothing that may be done anywhere under the Rights of War, which may not be done by Congress. . . . It seems strange to claim for the President alone, in the exercise of his single will, War Powers alleged to be denied to the President with Congress. . . . It is by Act of Congress that the War Powers are all put in motion. When once put in motion, the President must execute them. But he is only the instrument of Congress, under the Constitution. . . . Whether you regard Congress or regard the President, you will find that Congress is the arbiter and regulator of the War Powers. . . . Of the pretension that all these enormous powers belong to the President and not to Congress, I try to speak calmly and within bounds. I mean always to be parliamentary. But a pretension so irrational and unconstitutional, so absurd and tyrannical, is not entitled to respect.[2]

With reference to this debate over the scope and exercise of the war powers, Professor James G. Randall is of the opinion that the contention of Senator Sumner was sound.

> The judicial interpretation of this question lends support to the Sumner, rather than the Browning view. Full powers of sovereignty in the conduct of war have been conceded by the

[1] *Cong. Globe,* 37th Cong., 2d sess., pp. 2918 *et seq.*

[2] Sumner, *op. cit.,* vol. IX, pp. 138-39.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

courts to belong to the national legislature. Congress has the power to provide for the conduct of war, as well as to declare war.[1]

The late Professor Hermann von Holst, in discussing the relationship existing between the President and Congress with reference to the war powers, makes the following pertinent statement:

> The president is commander-in-chief of the army and navy, and also of the militia when the latter is called into the actual service of the United States. This is all the constitution has to say as to the military power of the president. . . . Congress can appoint no other commander-in-chief, and can withdraw from the president not the slightest part of the powers appertaining to the commander-in-chief. . . . But as we have seen, all military legislation is entrusted to congress, and the president is simply commander-in-chief and not at all the lord of peace and war. It is thus very difficult, if not impossible, to draw the line of demarcation with absolute certainty between the authority of congress and that of the president.[2]

In a recent monograph entitled *Executive Influence in Determining Military Policy in the United States,* Professor Howard White states the following conclusions:

> Although the Constitution gives the President independent power as commander-in-chief of the armed forces of the United States, it clearly confers upon Congress the power to determine military policy. Some of this power it frequently entrusts to the President. But this does not reduce its constitutional power. . . . Practically, this power is limited in two important respects: first, in a very direct way, by the President's control of foreign relations. "Through his power of shaping and enunciating foreign policies, he may virtually commit the nation to such policies, at least in a moral sense. . . . The President very largely controls the determination as to whether there shall be peace or war." This being true, the importance of the determination of Congress of how large the army shall be, how many

[1] James G. Randall, *op. cit.,* p. 42.

[2] Von Holst, *The Constitutional Law of the United States of America* (Chicago, 1887), pp. 192-93.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ships shall be built, and the other factors which make up the military policy may be chiefly in the question of how vigorously the war is to be prosecuted.[1]

III. Powers of the President Relative to the Beginning of Hostilities

1. Formulation of American Foreign Policy

It is apparent that the power to formulate American foreign policy is one whose exercise might well involve the nation in war. In times of diplomatic tension the determination of what course America shall pursue up to the very outbreak of war is largely in the hands of the President. The unique position of the Chief Executive is clearly enunciated by Jefferson in a letter to M. Genêt, November 22, 1793:

> He [the President] being the only channel of communication between this country and foreign nations, it is from him alone that foreign nations or their agents are to learn what is or has been the will of the nation; and whatever he communicates as such, they have the right, and are bound to consider as the expression of the nation.[2]

The possibilities of armed conflict arising out of this power to define America's attitude are well illustrated in the so-called Venezuela Question which came to a head during President Cleveland's second administration. In the summer of 1895, the relations between Great Britain and the United States became seriously strained with reference to the delimitation of the boundary line between British Guiana and Venezuela. Secretary Olney's instruction to Mr. Bayard, the American ambassador to the Court of St. James, in which the Monroe Doctrine was cited as a basis for American interest in this boundary dispute, was in the nature of a challenge to Great Britain.[3] On November 26, 1895, Lord Salisbury made reply

[1] H. White, *op. cit.* (Urbana, 1925), pp. 51-52.

[2] *American State Papers, Foreign Relations,* vol. I, p. 184.

[3] State Department, MS. Instructions, Great Britain, vol. 31; also MS. Despatches, Great Britain, vols. 180-83. R. M. McElroy, *Grover Cleveland* (New York, 1923), vol. II, pp. 173-202; H. James, *Richard Olney* (New York, 1923), pp. 96-142; A. L. P. Dennis, *Adventures in American Diplomacy* (New York,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in a note which traversed, in clear and cogent phrases, the contentions of Mr. Olney. Nothing daunted, President Cleveland, in a message to Congress, December 17, 1895, reaffirmed the applicability of the Monroe Doctrine to the dispute in question, and he recommended that Congress make an appropriation for the expenses of a commission, to be appointed by the President, which was to study and report on the subject in controversy. In conclusion, President Cleveland made the following significant observations:

> When such report is made and accepted, it will, in my opinion, be the duty of the United States to resist by every means in its power, as a willful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela.[1]

It is very apparent that war might easily have followed such a course of action. In this regard Judge Baldwin remarks:

> A sudden message to Congress from President Cleveland asks for the appointment of a commission to aid him in determining which nation is in the right, and intimates that if Venezuela proves in the right she shall have right done. In an hour, by this executive act, we are brought face to face with a question of war with the leading power in Europe, and the danger of it passes away through a diplomatic correspondence, for the issues of which the President was again alone responsible. The very ground of our interference in this quarrel of Venezuela—what was it but a doctrine proclaimed and indeed invented, by a President of the United States? The Monroe Doctrine has laid down the law for our hemisphere, and it was the single act of the executive department.[2]

In the decade following the Venezuela Dispute the President's power to determine peace or war was again exercised in

1928), ch. i. In a letter to Olney, Dec. 20, 1895, Theodore Roosevelt observed as follows: "I must write you just a line to say how heartily I rejoiced at the Venezuela message. I earnestly hope our people won't back down in any way." Olney Papers, Library of Congress.

[1] J. D. Richardson, *Messages and Papers of the Presidents*, vol. IX, p. 655.

[2] S. E. Baldwin, *Modern Political Institutions* (Boston, 1898), pp. 105-106.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a most interesting and effective manner. Upon the outbreak of the Russo-Japanese War, there was a possibility that both France and Germany would come to the assistance of Russia. In a letter to Cecil Spring-Rice, July 24, 1905, President Roosevelt recounted how he had prevented such a contingency:

> As soon as this war broke out I notified Germany and France in the most polite and discreet fashion that in event of a combination against Japan to try to do what Russia, Germany, and France did to her in 1894, I should promptly side with Japan and proceed to whatever length was necessary on her behalf.[1]

2. *The Power of Recognition*

The dangers involved in the power of recognition are quite apparent. Recognition is usually extended after the new state has given unmistakable evidence of its ability to maintain a separate existence and to fulfill its international obligations. Inasmuch as premature recognition has long been regarded as a legitimate cause for war, it is obvious that the hasty exercise of this power might precipitate the nation into a foreign war. In the Constitution of the United States there is no express mention of the power of recognition. Provision is made, however, for the reception of ambassadors and other public ministers by the President. According to diplomatic practice, the very fact of reception constitutes a mode of recognition, and it was in this manner that the Government of the United States extended recognition to the newly organized Republican Government of France on May 17, 1793. The official reception accorded M. Genêt on that date was regarded by Jefferson as "an acknowledgment of the legitimacy of their government."[2]

This precedent, established during the administration of President Washington, has come to be looked upon as the usual method by which the American Government recognizes

[1] Tyler Dennett, *Roosevelt and the Russo-Japanese War* (New York, 1924), p. 2.

[2] Thomas Jefferson, *Writings* (Ford ed.), vol. VI, p. 224. On the subject of recognition in general see J. B. Moore, *Digest of International Law* (Washington, 1906), vol. I, pp. 72-248. The attitude of the courts with reference to the power of recognition is well treated in J. G. Hervey, *The Legal Effects of Recognition in International Law* (Philadelphia, 1928).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a foreign government. Recognition, however, may also be extended through the issuance of exequaturs to foreign consular agents, through the despatch of accredited diplomatic representatives, or through the initiation of treaty negotiations. In the United States recognition has always been "the act of the President", but there still remains the question as to whether "this power is exclusive, or whether Congress enjoys an independent or concurrent power of recognition, or whether there are circumstances that might at least demand consultation with Congress before extending recognition."[1]

During the first two decades after the establishment of the national government there did not appear any disposition on the part of Congress to question the exclusive power of the President relative to recognition. It was not until 1811 that Congress made an interesting pronouncement in this regard. The revolt in the Spanish colonies in Latin America had broken out in the previous year, and was regarded with favor by the United States. In a message to Congress, November 5, 1811, President Madison significantly suggested that the American Government should take "a deep interest" in the revolutionary movements, and he counseled Congress to be prepared "for whatever order of things may be ultimately established."[2]

This message was referred to a committee which made a public declaration to the effect that Congress considered—

> with friendly interest the establishment of independent sovereignties by the Spanish provinces in America, consequent upon the actual state of the monarch to which they belonged; that as neighbors and inhabitants of the same hemisphere, the United States feel great solicitude for their welfare; and that when those provinces shall have attained the condition of nations by the just exercise of their rights, *the Senate and House of Representatives will unite with the Executive* in establishing with them as sovereign and independent states such amicable and commercial intercourse as may require their legislative authority.[3]

[1] C. A. Berdahl, "The Power of Recognition", *American Journal of International Law*, vol. XIV, pp. 524-25.

[2] J. D. Richardson, *op. cit.*, vol. I, p. 494.

[3] *American State Papers, Foreign Relations*, vol. III, p. 538. The italics are

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

From the tone of this public declaration one might infer that Congress assumed that in the important matter of the recognition of the struggling Spanish colonies the President should at least seek congressional counsel. The question was temporarily postponed by the rapid reconquest of Venezuela by Spain, and by the outbreak of hostilities between England and the United States.

In 1817, the outlook was more promising with reference to Latin-American independence, and on October 25 Monroe submitted the following memorandum to his Cabinet for consideration:

> Has the Executive power to acknowledge the independence of new states whose independence has not been acknowledged by the parent country, and between which parties a war actually exists on that account?
>
> Will the sending or receiving a minister to a new State under such circumstances be considered an acknowledgment of its independence?
>
> Is such an acknowledgment a justifiable cause of war to the parent country? Is it a just cause of complaint to any other power?
>
> Is it expedient for the U. States at this time to acknowledge the independence of Buenos Ayres or of any other part of the Spanish dominions in America now in a state of revolt?[1]

In commenting upon this memorandum which President Monroe submitted to his Cabinet, Professor Julius Goebel remarks:

> The character of the questions propounded by Monroe indicates the uncertainty of the administration not only as to the course it intended to pursue, but also over the question whether these matters were really within the competence of the executive. It was, perhaps, the very uncertainty surrounding this question of

the author's. The early relations between the United States and Latin America are discussed in W. S. Robertson, *Turner Essays* (New York, 1910), pp. 248 *et seq.*, and in J. F. Rippy, *Rivalry of the United States and Great Britain over Latin America (1808-1830)* (Baltimore, 1929).

[1] James Monroe, *Writings* (Hamilton ed.), vol. VI, p. 31.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

executive power which made possible the strong congressional opposition which developed from these questions. Indeed, when, on December 6, 1817, Henry Clay announced that he intended moving the recognition of Buenos Ayres and probably of Chile at the session of Congress then going on, no one appears to have questioned the impropriety of this procedure as an infringement upon executive power.[1]

President Monroe realized that a premature recognition of the independence of the revolted Latin-American colonies might well be considered as a *casus belli* by the mother country, and in this way the power of Congress to declare war would be rendered nugatory.[2] Monroe's hesitation was regarded by Henry Clay as an indication that the President would be willing to concede to Congress an important share in the power of recognition. Clay, with his eye always upon his own political advantage, now mounted what John Quincy Adams called "his South American great horse", and on March 24, 1818, he moved to insert into an appropriation then pending an amendment which authorized the expenditure of $18,000 for one year's salary and an outfit for a minister to the independent province of the River Plata. In defending his proposed amendment, Clay strongly asserted that Congress had an independent power of recognition:

> There are three modes under our Constitution in which a nation may be recognized: By the Executive receiving a minister; secondly, by its sending one thither; and, thirdly, this House unquestionably has the right to recognize in the exercise of the constitutional power of Congress to regulate foreign com-

[1] Julius Goebel, *The Recognition Policy of the United States* (New York, 1915), p. 121. See also J. M. Mathews, *The Conduct of American Foreign Relations* (New York, 1922), ch. vii; Quincy Wright, *The Control of American Foreign Relations* (New York, 1922), pp. 268 *et seq.*

[2] It is also recognized that Monroe's hesitation with reference to the Spanish colonies was in part due to his fear of offending the powers of the Quadruple Alliance. After England was detached from that coalition in 1821, it was decidedly safer for the United States to refuse any countenance to the European doctrine of legitimacy. See C. K. Webster, "Castlereagh and the Spanish Colonies", *English Historical Review,* vol. XXVII, pp. 78 *et seq.*, and vol. XXX, pp. 636 *et seq.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> merce. . . . Suppose, for example, we passed an act to regulate trade between the United States and Buenos Ayres; the existence of the nation would be thereby recognized, as we could not regulate trade with a nation which does not exist.[1]

On March 28, 1818, and again on March 30, Mr. Clay's motion was defeated by a vote of 115 to 45, thus indicating that the House of Representatives did not approve of Clay's contention. The sentiments of the majority were well expressed by Mr. Smith, of Virginia, who spoke in part as follows:

> The Constitution grants to the President, by and with the consent of the Senate, power to appoint ambassadors and public ministers, and to make treaties. According to the usage of the Government, it is the President who receives all foreign ministers, and determines what foreign ministers shall or shall not be received. It is by the exercise of some one of these powers, in neither of which this House has any participation, that a foreign Power must be acknowledged. Then the acknowledgment of the independence of a new Power is an exercise of Executive authority; consequently, for Congress to direct the Executive how he shall exercise this power, is an act of usurpation.[2]

Despite the affirmative vote in the House of Representatives upholding the presidential prerogative with reference to recognition, Monroe was still uncertain as to the proper procedure. On January 2, 1819, the question of recognition was discussed at a Cabinet meeting. Calhoun favored a concert with Great Britain, the inference being that he favored executive action. Mr. Crawford preferred to accord recognition by sending a minister to Buenos Aires, while Mr. Wirt suggested "that the House of Representatives must also concur by assenting to an Act of appropriation."

John Quincy Adams, however, insisted that the power of recognition was vested exclusively in the President. The following excerpt from his *Memoirs* clearly reveals his viewpoint:

> I said my impressions were altogether different. . . . Instead

[1] *Annals of Congress*, 15th Cong., 1st sess., vol. II, pp. 1616-18.

[2] *Ibid.*, pp. 1569-70.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of admitting the Senate or the House of Representatives to any share in the act of recognition, I would expressly avoid that form of doing it which would require the concurrence of those bodies. It was, I had no doubt, by our Constitution, an act of Executive authority.[1]

Clay was not dismayed by his failure to receive congressional support in favor of his theory of recognition, and on February 10, 1821, he induced the House of Representatives to adopt a resolution expressing active interest in the success of the revolting Spanish colonies, and assuring the President of congressional concurrence "whenever he may deem it expedient to recognize the sovereignty and independence of any of the said provinces."[2]

Finally, on March 8, 1822, Monroe sent a message to Congress to the effect that "the Provinces which have declared their independence and are in enjoyment of it ought to be recognized."[3] He also stated that he had invited the attention of Congress to this important subject in order to secure "such co-operation between the two departments of the Government as their respective rights and duties may require."

In response to this presidential message, the Committee on Foreign Affairs of the House of Representatives made a

[1] John Quincy Adams, *Memoirs,* vol. IV, pp. 205-206.

[2] *Annals of Congress,* 16th Cong., 1st sess., vol. II, pp. 2223, 2229-30.

[3] Richardson, *op. cit.,* vol. II, pp. 116-18. In *Senate Doc.* 56, 54th Cong., 2d sess., pp. 32 *et seq.,* Mr. Clay's argument with reference to the power of Congress to recognize new governments is strongly controverted as follows: "The practical construction of the Constitution from the beginning has shown that the theory is unsound for the following reason: That a regulation of commerce need not apply to the whole of the territory of any foreign nation. In other words, if a foreign nation is divided into various provinces, colonies, etc., Congress has the undoubted power to make regulations of commerce which shall apply to only one or more of such subdivisions. Such regulations might be a *casus belli,* but do not constitute recognitions of the independence of the subdivision with which commerce is regulated. . . . To claim that the power to regulate commerce with foreign nations involved a recognition of the independence of the nations with whom commerce is regulated would imply that no nation which is not independent can regulate commerce. It is, on the contrary, a familiar fact that Canada and many other colonies of Great Britain regulate their own commerce with practical independence to that extent." See also W. S. Robertson, *American Historical Review,* vol. XX, pp. 781-800.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lengthy report on March 19, 1822, in which complete agreement with the suggestion of President Monroe was indicated. Thus: "Your committee having . . . . considered the subject referred to them in all its aspects, are unanimously of opinion that it is *just and expedient* to acknowledge the independence of the several nations of Spanish America." [1]

Assured of Congressional support which he anxiously sought, President Monroe on June 19, 1822, formally received Mr. Manuel Torres as chargé d'affaires for the Republic of Colombia, thus terminating the long struggle for Latin-American recognition.[2]

In 1836 this same question as to the exercise of the power of recognition was once more threshed over, and for a second time it was Henry Clay who wished to hasten the decision of the Executive. Jackson had just brought to a close the spoliations controversy with France, during the course of which he had discovered that the Whig Party in the United States was partisan rather than patriotic.[3] If politicians like Clay and Webster had refused their support when the issue seemed perfectly clear, it now behooved the President to act with extreme caution in the matter of the recognition of Texas.

On June 18, 1836, the Senate Foreign Relations Committee submitted a lengthy report on the question of recognition, and recommended that "the independence of Texas ought to be acknowledged by the United States whenever satisfactory information shall be received that it has in successful operation a civil Government, capable of performing the duties and fulfilling the obligations of an independent Power." [4] This resolution was unanimously adopted by the Senate on July 1, 1836, and three days later the House of Representatives adopted a similar resolution by a vote of 128 to 20.[5]

[1] W. R. Manning, *Diplomatic Correspondence of the United States Concerning the Independence of the Latin-American Nations* (New York, 1925), vol. I, pp. 155 *et seq.*

[2] J. Goebel, *op. cit.*, p. 138.

[3] Claude G. Bowers, *Party Battles of the Jacksonian Period* (New York, 1924), pp. 386-422.

[4] *Congressional Debates*, vol. XII, 24th Cong., 1st sess., pt. 2, pp. 1846-48.

[5] *Ibid.*, p. 1928.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED.

President Jackson evinced no desire to quarrel with Congress relative to the recognition of Texas, and the following excerpts from his Message of December 21, 1836, will show that he went a long way toward granting Congress a share in the power of recognition:

> The acknowledgment of a new state as independent and entitled to a place in the family of nations is at all times an act of great delicacy and responsibility, but more especially so when such state has forcibly separated itself from another of which it had formed an integral part and which still claims dominion over it. A premature recognition under these circumstances, if not looked upon as justifiable cause of war, is always liable to be regarded as a proof of an unfriendly spirit to one of the contending parties. . . . It has . . . been made known to the world that the uniform policy and practice of the United States is to avoid all interference in disputes which merely relate to the internal government of other nations, and eventually to recognize the authority of the prevailing party, without reference to our particular interests and views or to the merits of the original controversy. Public opinion here is so firmly established and well understood in favor of this policy that no serious disagreement has ever arisen among ourselves in relation to it. . . . Nor has any deliberate inquiry ever been instituted in Congress or in any of our legislative bodies as to whom belonged the power of originally recognizing a new State—a power the exercise of which is equivalent under some circumstances to a declaration of war.
>
> . . . In the preamble to the resolution of the House of Representatives it is distinctly intimated that the expediency of recognizing the independence of Texas should be left to the decision of Congress. In this view, on the ground of expediency, I am disposed to concur, and do not, therefore, consider it necessary to express any opinion as to the strict constitutional right of the Executive, either apart from or in conjunction with the Senate, over the subject. It is to be presumed that on no future occasion will a dispute arise, as none has heretofore occurred, between the Executive and Legislature in the exercise of the power of recognition. It will always be considered consistent with the spirit of the Constitution, and most safe, that it should be exercised, when probably leading to war,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> with a previous understanding with that body by whom war can alone be declared, and by whom all the provisions for sustaining its perils must be furnished.[1]

Even as late as 1849, the power of the President to control the recognition of new states was still open to question. In 1848, a series of revolutions broke out in Europe, and in Hungary it seemed for a while that the revolutionists would be successful in maintaining their independence. There was evident sympathy in the United States for the cause of Hungary, and President Taylor thought it expedient to send a special agent, A. Dudley Mann, to investigate and report upon the progress of the revolution. In his instructions he was advised that:

> Should the new government prove to be, in your opinion, firm and stable, the President will cheerfully recommend to Congress, at their next session, the recognition of Hungary; and you might intimate . . . that the President would, in that event, be gratified to receive a diplomatic agent from Hungary in the United States, by or before the next meeting of Congress; and that he entertains no doubt whatever that, in case her new government should prove to be firm and stable, her independence would be *speedily recognized by that enlightened body*.[2]

After the outbreak of the American Civil War, France seized upon the opportunity to create an empire in Mexico, and to place upon the throne the Archduke Maximilian, of Austria. In April, 1864, Maximilian formally accepted the proffered crown and prepared to leave for Mexico. In this month the United States House of Representatives unanimously passed a resolution declaring that "it does not accord with the policy of

[1] Richardson, *op. cit.*, vol. III, pp. 266 *et seq.* See also G. L. Rives, *The United States and Mexico, 1821-1848* (New York, 1913), vol. I, pp. 393-401; N. W. Stephenson, *Texas and the Mexican War* (New Haven, 1921), ch. v.

[2] *Sen. Ex. Doc. No. 43*, 31st Cong., 1st sess., pp. 3-6. Italics are the author's. See also M. E. Curti, *Austria and the United States, 1848-1852* (Northampton, 1926), pp. 156 *et seq.*; and J. B. Moore, POLITICAL SCIENCE QUARTERLY, vol. X, pp. 263-64. For American public opinion relative to the revolutions of 1848, see A. J. May, *Contemporary American Opinion of the Mid-Century Revolutions in Central Europe* (Phila., 1927).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the United States to acknowledge any monarchical government erected on the ruins of any republican government in America under the auspices of any European Power."[1] Secretary of State Seward, realizing that the United States could not afford to become embroiled with France, paid scant heed to the House resolution. But the anti-administration leaders in the House of Representatives were resolved to place on record their views with reference to the conduct of foreign relations, and with this idea in mind they introduced another resolution, the text of which is as follows:

> *Resolved*, That Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States as well in the recognition of new powers as in other matters, and it is the constitutional duty of the President to respect that policy not less in diplomatic negotiations than in the use of the national force when authorized by law; and the propriety of any declaration of foreign policy by Congress is sufficiently proved by the vote which pronounces it; and such proposition while pending and undetermined is not a fit topic of diplomatic explanation with any foreign power.[2]

In the debate which followed the introduction of this resolution, most of the members of the House were inclined to support the position taken by Mr. Davis. Mr. Blaine, however, vigorously dissented, and in his reply to Mr. Davis, he remarked in part as follows:

> To adopt this principle is to start out with a new theory in the administration of our foreign affairs, and I think the House has justified its sense of self-respect and its just appreciation of the spheres of the co-ordinate departments of government by promptly laying the resolution on the table.[3]

On December 19, 1864, the resolution was again presented in an amended form: the word "President" was struck out and

[1] *Congressional Globe*, vol. XXXIV, pt. 2, 38th Cong., 1st sess., p. 1408. With reference to the Maximilian Empire in Mexico see Count Egon C. Corti, *Maximilian and Charlotte of Mexico* (New York, 1928).

[2] *Congressional Globe*, vol. XXXIV, pt. 3, p. 2475.

[3] *Ibid.*, vol. XXX, pt. 1, p. 49.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the phrase "executive department" substituted. In this form it passed with only eight negative votes.[1]

In 1896, the question of the recognition of Cuba was beginning to occupy more and more of the attention of the Government of the United States. On December 21, 1896, as a result of popular pressure, the Senate Foreign Relations Committee submitted a report which recommended the adoption of a joint resolution declaring that "the independence of the Republic of Cuba be, and the same is hereby acknowledged by the United States of America."[2] President Cleveland and Secretary of State Olney believed that such recognition was premature and therefore unjust to the mother country, Spain. Because it was premature, it could be regarded by Spain as a cause for war against the United States. It was also apparent that the President's prerogative with respect to the power of recognition was distinctly challenged by the report of the Senate Foreign Relations Committee.

Mr. Olney was not disposed to permit such a challenge to remain unanswered. He immediately requested the Attorney-General, Mr. E. B. Whitney, to prepare an opinion relative to the conduct of foreign relations in the United States, and in a letter of December 26, he freely imparted his views. To his mind there could be no question as to the intention of the members of the Constitutional Convention to divide—

> governmental powers into three parts, legislative, executive and judicial; to create three departments for the exercise of those powers respectively; and to make each wholly independent of the other except so far as express provisions of the Constitution may otherwise ordain.
>
> That the powers necessary for the charge and control of Foreign Relations are in no view judicial is plain, so that the question is to which of the two political departments of the

[1] *Ibid.*, pp. 65, 67. With reference to this resolution first presented by Mr. Davis, the report of the Foreign Relations Committee of the Senate, submitted on Jan. 11, 1897, contains the following statement: "This resolution was the first attempt in our history to establish the doctrine that Congress had a paramount authority in foreign affairs." See 54th Cong., 2d sess., *Sen. Doc.*, no. 56. See also B. C. Steiner, *Henry W. Davis* (Baltimore, 1916), pp. 257-61.

[2] *Sen. Doc.*, 56th Cong., 2d sess., pt. 7, no. 231, p. 64.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

government, the executive or the legislative, were those powers meant to be assigned.

That they were meant to be given to one or the other and not to the two concurrently or jointly . . . seems to me clear. If the foregoing propositions are taken for granted, . . . the next proposition is that when the constitution was adopted Foreign Relations were universally conceived of as falling within the scope of executive functions.

This proposition is established by

First, the nature of the powers required for efficiently dealing with Foreign Relations. They demand

(a) Secrecy;

(b) Celerity;

(c) Expert knowledge of the situation.

(d) The impossibility of anticipating the exigencies which Foreign Relations may present precludes the providing for them by legislation in advance.

(e) There is to be added the impossibility of carrying on a war, or even of conducting negotiations for peace except through a single executive head.[1]

Mr. Whitney was in complete agreement with Mr. Olney with reference to the exclusive power of the executive to recognize new states or governments, and in a letter to Mr. Olney, January 13, 1897, he presented his viewpoint. To him it appeared indubitable that—

> the "power to recognize a foreign State," considered all alone by itself, as in the first Cameron resolution, is not a complete power at all, and is therefore not in the strictest sense executive any more than legislative. It seems to me that it stands precisely like a finding of fact on which no judgment is entered. In other words, that the real executive act is not a mere declaration but the reception of an envoy. The reason that the "power to recognize a foreign State" is called an executive power seems to me to be that the acts which evince recognition, such as the reception of an envoy, are purely executive acts; while Congress cannot make a complete act of recognition without assistance from the Executive, but can only appropriate.[2]

[1] Olney Papers, Library of Congress.

[2] E. B. Whitney to Olney, Olney Papers, Library of Congress.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

These points of view presented by Mr. Olney and Mr. Whitney were finally accepted by the Senate Foreign Relations Committee, which receded from the stand taken in the report submitted on December 21, 1896. On January 11, 1897, a second report was submitted by the Committee in which the power of recognition is considered as belonging exclusively to the executive. The following excerpts from this second report are illustrative:

> It will be shown, both by the terms of the Constitution itself and by the uniform practice thereunder, that the recognition of the independence of a new foreign power is an act of the Executive (President alone, or President and Senate), and not the legislative branch of the Government, although the executive branch may properly first consult the legislative.
>
> While the legislative branch of the Government cannot directly exercise the power of recognizing a foreign government, because that is a power executive or judicial in nature, . . . nevertheless, if a recognition of such independence is liable to become a *casus belli* with some other foreign power, it will be shown that it is most advisable and proper for the executive first to consult the legislative branch as to its wishes and postpone its own action if not assured of legislative approval.[1]

It has usually been assumed that since the beginning of our national government the recognition policy of the United States has been based strictly upon the *de facto* principle.[2] It has also been assumed that during the administration of President Lincoln, Secretary Seward departed from the established practice of *de facto* recognition and insisted further upon popular approval of *de facto* governments. This so-called Seward Doctrine of Conditional Recognition is supposed to have fallen

[1] *Sen. Doc.*, 54th Cong., 2d sess., no. 56, p. 2.

[2] J. Goebel, *op. cit.*; also, F. L. Schuman, *American Policy Toward Russia Since 1917* (New York, 1928), pp. 267-71. It is interesting to note that in very recent times the President's exclusive power of recognition has been challenged by members of both Houses of Congress. In the 67th Congress, 2d sess., Senator Borah submitted a resolution in favor of the recognition of Russia (*Cong. Record*, p. 6945), and in the 69th Congress, 1st sess., Representative Berger introduced a resolution *directing* the President to recognize the Soviet Government (*ibid.*, p. 8872).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

into the discard shortly after the passing of the Seward régime, and it has been stated that President Wilson, with reference to his non-recognition policy in regard to Huerta in Mexico, went much farther even than Seward in defiance of the customary adherence to the principle of *de facto* recognition.[1] A careful examination of documentary material, however, clearly indicates that there has been no deviation of any great moment in the American policy of recognition from 1789 to the present time. All that Mr. Seward and Mr. Wilson did was to give unmistakable clarity to the American position, and to make explicit what has always been implied in the stand America has taken.

It was Jefferson who formulated the American doctrine of recognition, and his correspondence reveals that while he advocated the recognition of *de facto* governments, his advocacy of such governments was based upon the assumption that these governments represented the will of the majority of the people concerned. He was not interested in *de facto* governments erected by aggressive minorities. His position is made clear in his instructions to Gouverneur Morris with reference to the revolutionary government of France. On November 7, 1792, he instructed Morris as follows:

> It accords with our principles to acknowledge any Government to be rightful which is formed by the will of the nation, substantially declared. The late Government was of this kind, and was accordingly acknowledged by all the branches of ours; so any alteration of it which shall be made by *the will of the nation, substantially declared*, will doubtless be acknowledged in like manner.[2]

In a second letter to Morris, March 12, 1793, Jefferson developed his position. He appreciated the difficult position of Morris during the transition—

> from the late form of government to the re-establishment of

[1] For a sharp critique of the Wilson policy see Henry Lane Wilson, *Diplomatic Episodes in Mexico, Belgium and Chile* (New York, 1927), chs. xliv-xlv.

[2] Thomas Jefferson, *Writings* (Washington ed.), vol. III, p. 489. Italics are the author's.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> some other legitimate authority, and that you may have been at a loss to determine with whom business might be done. Nevertheless when principles are well understood their application is less embarrassing. We surely cannot deny to any nation that right whereon our own Government is founded—that every one may govern itself according to whatever form it pleases, and change these forms at its own will. . . . *The will of the nation is the only thing essential to be regarded.*[1]

Jefferson's emphasis upon popular sanction of *de facto* governments became an integral part of the American policy of recognition. When Louis Philippe ascended the throne of France as a result of the revolution of 1830, his government was duly recognized by the United States. Referring to the basis of this recognition, President Jackson, in a message to Congress, December 6, 1830, observed as follows:

> Notwithstanding the strong assurances which the man whom we so sincerely love and justly admire has given to the world of the high character of the present King of the French, . . . it is not in his success, but in that of the great principle which has borne him to the throne—*the paramount authority of the public will*—that the American people rejoice.[2]

When Louis Napoleon, as a result of the national elections of December, 1851, was able to overthrow the French Republic and establish the Second Empire, the American Government recognized the new government in France because it was apparently based upon popular consent. In Webster's instruction to the American minister, Mr. Rives, the following paragraph is significant:

> Before this reaches you the election will be over; and if, as is probable, *a decided majority of the people* should be found to support the President [Louis Napoleon] the course of duty for you will become plain. . . . *If the French people have now*

[1] Thomas Jefferson, *Writings* (Ford ed.), vol. VI, p. 199. Italics are the author's.

[2] Richardson, *op. cit.*, vol. II (Washington, 1896), p. 501. Italics are the author's.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

substantially made another change, we have no choice but to acknowledge that also.[1]

The disinclination of the Government of the United States to recognize new governments that had gained power through violence and in defiance of popular will is plainly evinced in the instructions sent by Secretary of State W. L. Marcy, to Mr. Wheeler, the American minister to Nicaragua. The American filibuster, William Walker, had just set up a new government with Don Patricio Rivas as President, and the American minister wished to be instructed as to the matter of recognition. Marcy's adherence to the Jeffersonian formula is unhesitating:

> It appears [he wrote to Wheeler] that a band of foreign adventurers has invaded that unhappy country, and, after gaining recruits from among the residents, has by violence overturned the previously existing government, and now pretends to be in possession of the sovereign authority. The knowledge we have of their proceedings does not authorize the President to recognize it as the *de facto* government of Nicaragua. . . . Should the *mass of the people of Nicaragua be unwilling or unable to repel this inroad or shake off this usurpation, and ultimately submit to its rule, then it may become de facto a government.*[2]

During his term of eight years as Secretary of State, Seward simply carried out the policy of his predecessors in office. There is a definite continuity in the recognition policy of the United States, and the supposed divergence of Mr. Seward is more imaginary than real. The action of the American Government in the withholding of recognition from the Paez Government in Venezuela is typical. Although the American minister had already recognized the government of General Paez, Seward disavowed such recognition because of the ab-

[1] *Sen. Ex. Doc.*, 32d Cong., 1st sess., no. 19, p. 19, Jan. 12, 1852. Italics are the author's. See also E. B. White, *American Opinion of France* (New York, 1927), pp. 130 *et seq.* With reference to American opinion of successive French governments from 1830 to 1871, see E. N. Curtis, *American Historical Review*, vol. XXIX, pp. 249 *et seq.*

[2] *House Ex. Doc.*, 34th Cong., 1st sess., no. 103, p. 35. Italics are the author's.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sence of any "conclusive evidence" that the *de facto* government was "fully accepted and peacefully maintained by the People" of Venezuela.[1]

Seward's policy is even more clearly revealed in his instructions to the American minister to Peru in 1866 and in 1868. On February 14, 1866, Mr. Hovey, the American minister, had recommended the recognition of the Prado Government. In reply, Mr. Seward observed:

> I have to state that so far as this government is enabled to form an opinion as to the propriety of the measure recommended, the time has not yet arrived for the recognition of the revolutionary government instituted by General Prado. The policy of the United States is settled upon the principle that revolutions in Republican States ought not to be accepted until the People have adopted them by organic law, with the solemnities which would seem sufficient to guarantee their stability and permanency.[2]

Because of the favorable reports of Mr. Hovey, and also because of "the peculiar circumstances of the situation of affairs", Seward instructed Hovey, April 21, 1866, to extend recognition to the Prado Government. The Prado Government was soon overturned and a Canseco Government was set up in Peru. This, in turn, was driven from power and the Balta Government was installed. On April 14, 1868, Mr. Hovey, an invincible optimist, wrote to Seward and recommended the recognition of the Balta Government. In his instruction of May 7, 1868, Seward, after indicating the need for caution in extending recognition to short-lived governments, clearly explained to the American minister the basis of the American recognition policy:

> What we wait for in this case is the legal evidence that the existing administration has been *deliberately accepted by the people of Peru.* When a republican form of government is con-

[1] Seward to Culver, Nov. 19, 1862, and March 9, 1863, MS. Inst. Venezuela, vol. I, Dept. of State.

[2] Seward to Hovey, March 8, 1866, and April 7, 1866, MS. Inst. Peru, vol. XVI, Dept. of State.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> stitutionally established, we have to recognize the administration and to extend to it a cordial friendship. We do thus because every State which constitutes itself a republic becomes by force of that very circumstance a bulwark of our own republic. We do not deny or question the right of any nation to change its republican constitution. . . . What we do require, and all that we do require, is when a change of administration has been made, not by *peaceful constitutional processes*, but *by force*, that then the new administration shall be sanctioned by the *formal acquiescence and acceptance of the people*.[1]

It remained for Seward's successors to add a new test for recognition—the ability of new governments to fulfill their international obligations. This test is referred to by President Hayes in his annual message of December 3, 1877, with specific reference to the recognition of the Diaz Government in Mexico,[2] and Secretary of State Evarts, in an instruction to Mr. Baker, the American minister to Venezuela, makes mention of this test in relation to the recognition of the government set up by the Provisional President, Guzman Blanco. The Blanco administration was "not understood to have gained power by any constitutional process of election or endorsement", and while its claims to *de facto* recognition were "weighty", yet it thought best to defer formal intercourse until assurance could be had that "such a step will not only rest on the popular will of Venezuela, but will also be beneficial to the relations between the United States and that country. *Good faith in the observance of international obligations is the first essential towards the maintenance of such relations.*"[3]

In pursuance of its recognition policy, the Government of the United States, with special reference to the recognition of new governments outside the American hemisphere, endeavored always to make it clear that there was a broad distinction between *de facto* recognition and *de jure* recognition.

[1] Seward to Hovey, May 7, 1868, MS. Inst. Peru, vol. XVI, Dept. of State. Italics are the author's.

[2] Richardson, *op. cit.*, vol. VII, pp. 467-68.

[3] April 8, 1879, MS. Inst. Venezuela, vol. III, Dept. of State. Italics are the author's.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Government of the United States was willing to recognize *de facto* governments if they were based upon popular approval, and if they could fulfill their international obligations. The question as to whether the *de facto* government was a *legitimate* one has been considered outside the scope of our recognition policy. Dynastic claims have never been passed upon by any American Government. This stand on the part of the State Department is well illustrated in the following memorandum from Alvey A. Adee, Acting Secretary of State, to Mr. Olney, who was away from Washington on a visit. The memorandum was written with reference to the recognition of the Principality of Trinidad:

> We do not, as a government [remarks Mr. Adee] go into the business of "recognizing" new states *de jure*. What is commonly called *recognition* is that transaction of necessary international business with an evident *de facto* government administering the affairs of the State—we simply deal with the man we find in charge of the shop. Even in concluding a treaty we negotiate with the *de facto* power. The case of Korea is in point. Under Li Hung Chang's initiation, we signed the Korea treaty on the representations of China as well as Korea that the latter was independent in her outward relations although in her internal administration a tributary of China. We declined to subscribe, either to the Chinese contention that we had "recognized" China's suzerainty, or to Korea's claim that we had recognized her independence *de jure*. We simply said that for all international effects of the treaty we could deal only with Korea as a responsible contracting party, not with China as the ultimate sovereign.[1]

This refusal of the Government of the United States to recognize any government as a *de jure* government is clearly evidenced in its procedure toward the new government in Serbia in 1903. On the night of June 10, 1903, King Alexander and his Queen were assassinated in a most brutal manner, thus putting an end to the Obrenovitch dynasty. Shortly after the murder, Peter, a representative of the rival Karageorgevitch dynasty, ascended the throne of Serbia, thus placing before the nations of the world the question of recognition.

[1] July 30. 1895, Olney Papers, Library of Congress.

PEORIA PUBLIC LIBRARY
NOV 8 1945
LICENSED TO HATHI TRUST.ORG
ELECTRONIC REPRODUCTION PROHIBITED

To the American minister, John B. Jackson, it seemed obvious that there was but one course open to the American Government.[1] The new government would fulfill its *international obligations,* and it rested upon *popular approval.* These two criteria could be applied with safety to the new Serbian government; the question of the legitimacy of the Karageorgevitch dynasty need not bother the American Government. Mr. Adee, the Acting Secretary of State, was impressed with the despatch of Mr. Jackson of June 29, 1903, in which the situation in Serbia was carefully canvassed, and in a memorandum of July 13 to Hay he observed:

> There can be only two valid grounds for non-recognition of King Peter—
>
> 1st. A conviction that he was accessory before the fact to the murder of the late king.
>
> 2d. An opinion that the virtual reward of the murderers and their participation in the new Govt. is immoral. I hardly know what right we have to sit in judgment on either of these charges.[2]

The action of the Government of the United States is foreshadowed in the endorsement made by John Hay, Secretary of State, upon the back of Mr. Adee's memorandum:

> Dear Adee,
>
> I see no reason why we should not accredit him [Jackson] to Servia.[3]

It appears to be a matter of common belief that during the administration of President Wilson a new policy of recognition was inaugurated. It is Professor Ogg's opinion that Wilson's stand with reference to the Huerta Government in Mexico constituted "an innovation in our dealings with Latin-American states. Hitherto the question of recognition was settled on grounds of the new government's strength and probable permanence."[4] According to Mr. Henry Lane Wilson, the Ameri-

[1] Jackson to Hay, June 29, 1903, MS. Desp. Serbia, vol. I, State Department.

[2] MS. Desp. Serbia, vol. I, State Department.

[3] *Ibid.*

[4] F. A. Ogg, *National Progress* (New York, 1918), p. 290.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

can minister to Mexico during the Huerta régime, the action of the Wilson administration in not recognizing Huerta "amounted to a complete reversal of our traditional policy of non-interference which was announced by Franklin Pierce and adhered to by every President from Pierce to Wilson." [1]

In truth, however, President Wilson merely applied to the Huerta Government the traditional tests of popular approval and ability to fulfill international obligations. Although his policy in this regard brought the United States to the verge of war with Mexico, he was following, none the less, a policy fixed by a long line of precedents. The difficulties with Mexico simply illustrate how the power of recognition can, in some cases, constitute an equivalent of the war-making power itself.[2]

3. The Power to Sever Diplomatic Relations

Inasmuch as the President has the power to receive or send properly accredited diplomatic representatives, he has the corresponding power to recall American representatives from abroad, and, for sufficient reasons, to dismiss the representatives of foreign powers. The breaking off of diplomatic relations has usually been regarded as strictly an executive function, but in 1919, an attempt was made to limit the presidential prerogative. On December 3, 1919, Senator Fall, of New Mexico, introduced a concurrent resolution providing that "the President be and he is hereby requested to withdraw from Venustiano Carranza the recognition heretofore accorded him by the United States as President of the Republic of Mexico and to sever all diplomatic relations now existing between this Government and the pretended government of Carranza." [3]

Senator Fall's resolution evoked immediate response from President Wilson. In a letter of December 8, 1919, addressed to Senator Fall, President Wilson vigorously expressed his

[1] H. L. Wilson, *op. cit.*, p. 304.

[2] T. Cole, *The Recognition Policy of the United States Since 1901*, pp. 53-72; see also E. O'Shaughnessy, *Intimate Pages of Mexican History* (New York, 1920), pp. 191 *et seq.*, for a sympathetic interpretation of the Huerta régime in Mexico.

[3] *Congressional Record*, vol. 59, p. 73.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

conception of presidential powers with reference to the control of foreign relations:

> I should be gravely concerned to see any such resolution pass the Congress. It would constitute a reversal of our constitutional practice, which might lead to very great confusion in regard to the guidance of our foreign affairs. I am convinced that I am supported by every competent constitutional authority in the statement that the initiative in directing the relations of our Government with foreign Governments is assigned by the Constitution to the Executive, and to the Executive only. Only one of the Houses of Congress is associated with the President by the Constitution in an advisory capacity, and the advice of the Senate is provided for only when sought by the Executive in regard to explicit agreements with foreign Governments and the appointment of diplomatic representatives who are to speak for this Government at foreign capitals. The only safe course, I am confident, is to adhere to the prescribed method of the Constitution. We might go very far afield if we departed from it.[1]

Immediately upon the receipt of this letter from President Wilson, Senator Lodge, Chairman of the Senate Committee on Foreign Relations, announced that the committee would take no further action with reference to the Fall resolution. "The President", remarked Mr. Lodge, "desires complete responsibility for the Mexican situation to rest on him. Let it rest there."[2]

4. The War Powers with Reference to a Declaration of War

(a) Federal Convention

The Constitution of the United States specifically vests in Congress the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."[3] In the Constitutional Convention of 1787 the war-making powers were the subject of earnest discussion. As

[1] *New York Times*, Dec. 9, 1919.

[2] *Ibid.*

[3] Article I, sec. 8, clause 11.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

early as June 18, Hamilton presented his plan for a federal government, and in Article VI, the Senate was "to have the sole power of declaring war."[1] In the report of the Committee of Detail, August 6, 1787, the power to "make war" is vested in the "Legislature of the United States".[2]

On August 17, the report of the Committee of Detail, with reference to the war-making powers, came before the Convention for discussion. Mr. Charles Pinckney, of South Carolina, was

> opposed to vesting this power in the Legislature. Its proceedings were too slow. It wd. meet but once a year. The Hs. of Reps. would be too numerous for such deliberations. The Senate would be the best depositary, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States are equally represented in Senate, so as to give no advantage to large States, the power will notwithstanding be safe, as the small have their all at stake in such cases as well as the large States. It would be singular for one authority to make war, and another peace.
>
> Mr. Butler. The objections agst. the Legislature lie in great degree agst. the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.
>
> Mr. Madison and Mr. Gerry moved to insert "declare," striking out "make" war; leaving to the Executive the power to repel sudden attacks.
>
> Mr. Sharman thought it stood very well. The Executive shd. be able to repel and not to commence war. "Make" better than "declare" the latter narrowing the power too much.
>
> Mr. Gerry never expected to hear in a republic a motion to empower the Executive alone to declare war.
>
> Mr. Elsworth. There is a material difference between the cases of making war and making peace. It shd. be more easy to get out of war, than into it. War also is a simple and overt declaration. Peace attended with intricate and secret negotiations.

[1] *House Doc.* 398, 69th Cong., 1st sess., p. 980.

[2] *Ibid.*, p. 475.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Mr. Mason was agst. giving the power of war to the Executive, because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating peace. He preferred "declare" to "make."

On the motion to insert "declare" in place of "make", it was agreed to.

N. H. no. Mas. abst. Cont. no. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Pinkney's motion to strike out whole clause, disagd. to without call of States.

Mr. Butler moved to give the Legislature power of peace, as they were to have that of war.

Mr. Gerry 2ds him. 8 Senators may possibly exercise the power if vested in that body, and 14 if all should be present: and may consequently give up part of the U. States. The Senate are more liable to be corrupted by an Enemy than the whole Legislature.

On the motion for adding "and peace" after "war."

N. H. no. Mas. no. Ct. no. Pa. no. De. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no.[1]

(b) Attitude of the Supreme Court

With reference to the power to declare war the Supreme Court has held as follows:

> By the Constitution, Congress alone has the power to declare a national or foreign war. . . . The Constitution confers on President the whole executive power. . . . He is Commander-in-Chief of the Army and Navy of the United States. . . . He has no power to initiate or declare a war either against a foreign nation or a domestic state.[2]
>
> The whole powers of war being, by the Constitution of the United States, vested in Congress, the acts of that body can alone be resorted to as our guide in this inquiry. It is not denied, nor in the course of the argument has it been denied, that Congress may authorize general hostilities, in which case the general laws of war apply to our situation; or partial

[1] *Ibid.*, pp. 561-63.

[2] *The Prize Cases*, 2 Black, 635, 668, 17 L. ed. 459, 477.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed.[1]

(c) Opinions of Publicists and Statesmen

During the course of a debate in the United States Senate in 1906, Senator Bacon supported the opinion that Congress was supreme with reference to the beginning of war. "The President", he asserted, "not only cannot declare war . . . . but even if the President should be opposed to a proposed war, two-thirds of each branch can declare war. It would not require his approval. There is the most important of all foreign relations. It does not belong to the President."[2]

Despite the Senator's vigorous assertion as to congressional control over the war-making power, we have already seen in the course of this study that the President may so direct foreign relations as to make war inevitable, and the consequent declaration of war a mere formality. It is also true that an independent, self-willed President can bid defiance to Congress and refuse to yield to pressure exerted upon him in the direction of war. According to American practice, Congress has declared war only after receiving a message from the President indicating the necessity for war, and President Cleveland, by his resolute stand against hostilities with Spain concerning Cuba, gave an excellent illustration of how effective presidential opposition can be in postponing any aggressive action on the part of Congress. During the last two years of President Cleveland's second administration, the Cuban revolt against Spanish rule awakened deep sympathy in the United

[1] *Talbot v. Seeman*, 1 Cranch, 1, 28, 2 L. ed. 15, 24.

[2] Quoted in E. S. Corwin, *The President's Control of Foreign Relations* (Princeton, 1917), p. 191. John Quincy Adams was of the opinion that the "founding fathers" had made a great mistake in giving to Congress the power to declare war. In December, 1817, he wrote as follows in his diary: "Mr. Middleton, Chairman of the Amelia Island Committee, was also with me, and I gave him all the additional information that I possessed concerning it. I showed him the secret laws, those singular anomalies of our system which have grown out of that error in our Constitution which confers upon the legislative assemblies the power of declaring war, which, in the theory of government, according to Montesquieu and Rousseau, is strictly an Executive act." See Adams, *op. cit.*, vol. IV, p. 32.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

States for the hard-pressed revolutionists. An increasing number of members of both Houses of Congress were in favor of intervention on behalf of Cuba, and President Cleveland had great difficulty in restraining them. The firm manner in which he met congressional importunity is interestingly told by Mr. A. B. Farquhar, a close friend of the President:

> I was with the President at Woodley, near Washington, one Sunday afternoon [relates Mr. Farquhar] when some members of Congress came in and said, "Mr. President, we wish to see you on an important matter." I got up, but he motioned me to keep my seat. They said, "We have about decided to declare war against Spain over the Cuban question. Conditions are intolerable."
>
> Mr. Cleveland drew himself up and said, "There will be no war with Spain over Cuba while I am President."
>
> One of the members flushed up and said angrily, "Mr. President, you seem to forget that the Constitution of the United States gives Congress the right to declare war."
>
> He answered, "Yes, but it also makes me Commander-in-Chief, and I will not mobilize the army. I happen to know that we can buy the Island of Cuba from Spain for $100,000,000, and a war will cost vastly more than that and will entail another long list of pensioners. It would be an outrage to declare war."[1]

When Mr. McKinley became President, on March 4, 1897, relations between the United States and Spain became even more strained than they had been during the previous administration, but at first McKinley was firm against war. This attitude so enraged the interventionists that they concentrated their attacks upon the President, and one choleric Senator repaired to the Department of State to deliver the following ultimatum to the Chief Executive: "Hay, by God, don't your President know where the war-declaring power is lodged?

[1] R. M. McElroy, *op. cit.*, vol. II, pp. 249-50. With reference to the Cuban revolt and subsequent relations with the United States, see C. E. Chapman, *A History of the Cuban Republic* (New York, 1927), ch. iv; F. E. Chadwick, *The Relations of the United States and Spain* (New York, 1909), pp. 411 *et seq.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Tell him, by God, that if he doesn't do something, Congress will exercise the power." [1]

After McKinley had been President one year, it became evident that he would soon respond to popular pressure and recommend intervention in Cuba. In an effort to find some way to avert this contingency, Mr. E. F. Atkins wrote to the former Secretary of State, Mr. Olney, and urged him to take action. In reply, Olney observed as follows:

> In what way do you think I can help? The truth is, whether there shall be war or not, *lies wholly with the President.* The Senate and House cannot make war *without him*; cannot, I believe, declare war over his veto; and are without power to recognize Cuban belligerency or independence—such recognition being an executive function exclusively.[2]

When McKinley finally surrendered to the interventionists and sent his war message to Congress, ex-President Cleveland, in a letter to Olney, freely expressed his opinion of the Chief Executive:

> McKinley is not a victim of ignorance, but of amiable weakness not unmixed with political ambition. He knew, or ought to have known, the cussedness of the Senate and he was abundantly warned against Lee. And yet he has surrendered to the former and given his confidence to the latter. . . . In the meantime, we, who have undertaken war in the interest of humanity and civilization, will find ourselves in alliance and cooperation with Cuban insurgents—the most inhuman and barbarous cutthroats in the world.[3]

[1] C. S. Olcott, *Life of William McKinley* (New York, 1916), vol. II, pp. 26 *et seq.*

[2] Olney to E. F. Atkins, April 4, 1898, Olney Papers, Library of Congress. The italics are the author's.

[3] April 26, 1898, Olney Papers, Library of Congress. On January 18, 1916, Senator Newlands gave a graphic account of the manner in which President McKinley was pushed into sending a war message to Congress. In his opinion the President was "driven into that war both by the adversary party and by the insurgents in his own party. He was always confident that he could have secured the freedom of Cuba without war, but the war sentiment of the country was so aroused that he found it impossible to resist it." *Congressional Record,* 64th Cong., 1st sess., vol. 53, pt. 2, p. 1193.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

After a careful study of the situation, Rear-Admiral F. E. Chadwick was likewise critical of McKinley's failure to avert war. In a letter to Mr. Olney, Admiral Chadwick remarks:

> There was a wobbling in McKinley's administration to which we cannot shut our eyes. He began wrong, very wrong, in appointing Sherman Secretary of State. By April 11, 1898, he had won a complete diplomatic victory (by very bad diplomacy however). The game was completely in our hands. Spain yielded everything but her flag in Cuba, and—we declared war. This, so far as I see it, is the diplomatic aspect of the question; the war was one of physics, and must be handled on that ground; for no diplomacy, no reasoning will stay a national impulse which has acquired such energy as the McKinley administration allowed it to acquire.[1]

With reference to the President's share in the war-making power, Professor J. M. Mathews comments as follows:

> It may be accepted as an established "convention" of the Constitution that, although Congress has full legal power to declare war without regard to the President's wishes, and may even pass such declaration over his veto by a two-thirds vote as in the case of any other act, nevertheless it will not pass such an act in the first place unless assured of the support and approval of the President as indicated by his express or virtual recommendation that such a declaration be issued. The President has control of diplomatic intercourse and of the sources of official information regarding foreign relations. Congress has nothing of the sort. Moreover, Congress is dependent upon the President, as commander-in-chief, to prosecute any war that it may declare. Hence, the power of that body to declare war can be correctly appraised only when considered in connection with the President's powers touching the beginning of war. The latter powers are both positive and negative. Positively, the President may, through the exercise of his diplomatic and executive powers, bring on a situation such that Congress, even against its wishes, will be practically compelled to support his war policy. Negatively, he may prevent a declaration of war by Congress by declining to recommend or approve it.[2]

[1] March 2, 1909, Olney Papers, Library of Congress.

[2] Mathews, *op. cit.*, pp. 307-308.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

5. *The Power to Protect the "Inchoate" Interests of the United States*

It was during the administration of President Tyler that the first steps were taken, without legislative warrant, for the protection of the so-called "inchoate interests" of the United States. President Tyler was extremely anxious to annex Texas to the United States, and on April 12, 1844, a treaty of annexation was signed. The Texan commissioners had been promised that after the treaty was signed and while ratification by the Senate was pending, the President would employ all the means placed within his power by the Constitution of the United States to protect Texas against all foreign invasion.[1] The Senate of the United States, learning of this pledge, promptly passed a resolution of inquiry, to which President Tyler replied in a special message of May 15, 1844, which explained—

> that the United States having by the treaty of annexation acquired a title to Texas which required only the action of the Senate to perfect it, no other power could be permitted to invade and by force of arms possess itself of any portion of the territory of Texas pending your deliberations upon the treaty without placing itself in a hostile attitude to the United States and justifying the employment of any military means at our disposal to drive back the invasion.[2]

The President's message evoked a storm of protest in the Senate. The following excerpt from the speech of Senator Benton is typical of the attack made upon the President's position:

> This is a reversal of the power of the Senate and a reading backwards of the Constitution. It makes an act of defeasance from the Senate necessary to undo a treaty which the President sends to us, instead of requiring our assent to give it validity. It assumes Texas to be in the Union, and protected by our Con-

[1] Calhoun to Van Zandt, *House Ex. Doc.* no. 271, 28th Cong., 1st sess., p. 96.

[2] Richardson, *op. cit.*, vol. IV, p. 317. See also J. S. Reeves, *American Diplomacy under Tyler and Polk* (Baltimore, 1907), pp. 145 *et seq.*; E. S. Corwin, *op. cit.*, p. 156.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> stitution from invasion or insurrection, like any part of the existing States or Territories; and to remain so till the Senate puts her out by rejecting the treaty! This, indeed, is not merely reading, but spelling the Constitution backwards! It is reversing the functions of the Senate and making it a nullifying, instead of a ratifying body.[1]

A distinguished American historian in discussing Tyler's message to Congress remarks:

> Substantially of course the President was right. The Texan Congress had recently declared most emphatically for annexation. No one could deny that a ratification of the treaty by the American Senate would be followed in all probability by every needful act on the part of that nation. Its imperilled situation was a powerful assurance of this. Now the law has its fictions,—bold "short cuts" through difficulties to substantial justice,—and perhaps Tyler looked upon the view expounded in his message as of such a character. But whether it was wise to embarrass a troublesome question by asserting what could be described as palpably contrary to the facts may well be doubted.[2]

On June 15, 1845, President Polk sent orders to General Zachary Taylor to place his troops at some port where they could readily embark for the Texas frontier. After the general should receive news that Texas had accepted the offer of annexation to the United States, he was then to occupy, "on or near the Rio Grande del Norte", a position "best adapted to repel invasion." In the last week of March, 1846, General Taylor's troops reached the Rio Grande. On April 25, some Mexican cavalry under General Torrejon attacked a detachment of American dragoons under Captain Thornton, killing and wounding several of the American detachment. When President Polk heard of these hostilities he sent to Congress his message of May 11, 1846, in which he declared that war existed "by the act of Mexico herself." The fact that by the concentration of American troops along the Rio Grande the

[1] *Congressional Globe*, 28th Cong., 1st sess., vol. XIII, App. p. 498.

[2] Justin H. Smith, *The Annexation of Texas* (New York, 1911), p. 228.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

clash between the American and Mexican forces was rendered inevitable, was not adverted to by the President.[1]

The policy of President Grant with reference to the annexation of Santo Domingo was also based upon the principle of the "inchoate interests" of the United States. The President was certain that great benefits would accrue to the United States from such an acquisition, so on January 10, 1870, a treaty of annexation was laid before the Senate for consideration. On June 30, 1870, by a tie vote this treaty failed to be ratified by the Senate of the United States.

During the pendency of the Santo Domingo treaty the President employed the armed forces of the United States to protect the territory of Santo Domingo from invasion. The following order from Mr. Robeson, the Secretary of the Navy, to Commodore Joseph F. Green, February 19, 1870, indicates the nature of this protection:

> You will receive your special instructions hereafter from the Rear Admiral commanding the North Atlantic Fleet, but for the present it is desirable that you should remain with the force under your command in and about the Island of San Domingo, especially the part belonging to the Dominican Government, and the Isthmus of Samana, for the cession of which the United States are now in treaty with the Dominican government. While the treaty is pending the government of the United States has agreed to afford countenance and assistance to the Dominican people against their enemies now in the Island, and in revolution against the lawfully constituted government, and you will use the force at your command to resist any attempts by the enemies of the Dominican Republic to invade the Dominican territory by land or sea, so far as your power can reach them.[2]

Even after the treaty was defeated in the Senate in June, 1870, President Grant still had hopes that the annexation could be effected. On December 5, 1870, in his annual message to Congress, he strongly urged that the President be authorized

[1] Richardson, *op. cit.*, vol. IV, pp. 442-43. See also J. Smith, *The War with Mexico* (New York, 1919), vol. I, chs. vii, ix; G. L. Rives, *op. cit.*, vol. II, ch. xxxiii.

[2] Confidential Letters, vol. 5, Navy Department Library.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"to appoint a commission to negotiate a treaty with the authorities of San Domingo for the acquisition of that island, and that an appropriation be made to defray the expenses of such a commission."[1] On January 12, 1871, Congress authorized the appointment of such a commission.[2] The commission left the United States in the latter part of January, 1871, and after a short sojourn in the island, it returned and advised in favor of annexation.[3]

During this period of investigation, the territory of Santo Domingo remained under the protection of the armed forces of the United States. The constitutional basis for this protection was outlined in an order from Mr. Robeson, the Secretary of the Navy, to Rear Admiral S. P. Lee, March 21, 1871:

> The situation is this [observes Mr. Robeson]. The President of the United States has by the Constitution the right to make treaties, subject to the ratification of the Senate. The Congress of the United States in 1866 appropriated a considerable sum of money, for the understood purpose of acquiring by lease or purchase a part of the island of San Domingo. . . . To initiate all treaties is the constitutional right of the President, and thus he had the constitutional power to negotiate treaties for the cession of Samana and the annexation of the Dominican Republic. . . . In pursuance of this constitutional right he did negotiate such treaties with the existing government of the Republic. These treaties were of course inchoate and subject to be confirmed or defeated by the action of the Senate of the United States, and of the people of the Dominican Republic; but by such treaties and pending such final action, the United States acquired an interest in the thing negotiated for, which could not be rightfully disturbed by any other power; and it was the plain duty of the Executive to protect, if need be, the integrity of this constitutionally acquired interest.[4]

[1] Richardson, *op. cit.*, vol. VII, pp. 99-100.

[2] *Sen. Ex. Doc.*, 42d Cong., 1st sess., no. 9, p. 4.

[3] *Ibid.*, pp. 4-34. With reference to the political and diplomatic aspects of Grant's Santo Domingo policy see E. L. Pierce, *Memoir and Letters of Charles Sumner* (Boston, 1894), vol. IV, pp. 426-88; Sumner Welles, *Naboth's Vineyard* (New York, 1928), vol. I, pp. 359 *et seq.*; L. A. Coolidge, *Life of Ulysses S. Grant* (New York, 1922), ch. xxxiii.

[4] Confidential Letters, vol. 5, Navy Department Library.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In the Senate of the United States there was spirited opposition to the annexation policy of the President. Senator Sumner exerted his entire energy to defeat the treaty, and he offered the following resolution in condemnation of the President's course:

> *Resolved*, That under the Constitution of the United States the power to declare war is placed under the safeguard of an act of Congress; that the President alone cannot declare war; that this is a peculiar principle of our Government by which it is distinguished from monarchical Governments, where power to declare war, and also the treaty-making power, is in the Executive alone; that in pursuance of this principle the President cannot, by any act of his own, as by an unratified treaty, obtain any such power, and thus divest Congress of its control; and that therefore the employment of the Navy without the authority of Congress in acts of hostility against a friendly foreign nation, or in belligerent intervention in the affairs of a foreign nation, is an infraction of the Constitution of the United States and a usurpation of power not conferred upon the President.
>
> *Resolved*, That while the President, without any previous declaration of war by act of Congress, may defend the country against invasion by foreign enemies, he is not justified in exercising the same power in an outlying foreign island, which has not yet become part of the United States; that a title under an unratified treaty is at most inchoate and contingent, while it is created by the President alone, in which respect it differs from any such title created by act of Congress; and since it is created by the President alone, without the support of law, whether in legislation or a ratified treaty, the employment of the Navy in the maintenance of the Government there is without any excuse of national defense, and also without any excuse of a previous declaration of war by Congress.[1]

Senator Carl Schurz, of Missouri, gave strong support to Sumner's resolution. In criticizing the President's action relative to the employment of the Navy for the protection of the territory of Santo Domingo during the pendency of the treaty, Schurz observed:

[1] *Congressional Globe*, 42d Cong., 1st sess., pt. 1, p. 294.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> The Constitution of the United States provides that the Congress shall have power to declare war; but my eloquent friend from Wisconsin [Mr. Howe], steps in and says, as I understood him, although Congress may have the sole power, with the approval of the President, to declare war, yet war can be made, acts of war can be committed without the authority of Congress. . . . What is that great safeguard of our peace and security, as it is written in the Constitution, that Congress, and not the President alone, shall have the power to declare war—what is it worth if an executive officer of the Government can initiate or make war without congressional authority? . . . Sir, that simple provision of the Constitution that Congress shall have power to declare war cannot by any rule of construction be interpreted to mean anything else but that Congress, and not the President alone, shall define the contingencies in which the belligerent power of the United States is to be used. I therefore affirm that the President in ordering the naval commanders of the United States to capture and destroy by force of arms the vessels of a nation with whom the United States were at peace, in a contingency arbitrarily defined by himself other than self defense, did usurp the war-making power of Congress.[1]

The defense of the President's policy was undertaken by Senator Harlan, who remarked in part as follows:

> When we were disputing with Great Britain about our northeastern boundary, I remember we arrayed some military forces in that vicinity. When we were engaged in a controversy with the same Government on the northwestern boundary, I remember that the disputed territory was taken possession of by the troops of the United States without any formal declaration of war. I have heard something of the bombardment of Greytown by the Navy of the United States, and I have never seen any declaration of war to justify that act of hostility.
>
> . . . I have heard something of the bombardment of the ports of Japan by the combined Navies of the United States, France, and England, which . . . was not condemned, and we took our share of the indemnity thus secured from the Government of Japan, . . . yet there was no formal declaration of war to justify it.

[1] *Congressional Globe*, 42d Cong., 1st sess., pt. 2, pp. 51-52.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> . . . Now how do you account for all these acts of hostility, not threats, not diplomatic despatches merely, not a declaration if our rights shall be invaded we would defend them, but actual war; not a war of words, but a war made with armies and navies, taking possession of disputed and hostile territory, fighting pitched battles and bombarding cities, war made with guns and solid shot and shell, where we compelled the vanquished to pay indemnity and put it into our Treasury, and yet no declaration of war? How does it happen that these two Senators, in their zeal to defend the Constitution of the United States, can find but one case worthy of their logic, their great learning, and their eloquence?[1]

The eloquence and learning of both Schurz and Sumner was wasted upon a Senate that was safely pro-administration. The resolutions of Sumner afforded an excellent opportunity for the opponents of Grant to belabor the President, but their defeat was swift and certain. And in some respects the defense of the President's policy had been shrewd and well matured. With particular reference to Harlan's speech, Professor Corwin makes the following comment: "Harlan's argument from precedent at least demonstrated the futility of attempting to confine the President's protective function to the mere duty of repelling invasion or immediate physical attack, nor do Schurz and Sumner appear to have attempted to meet him upon this issue."[2]

6. *The Power to Protect American Rights and Interests Abroad*

During the past one hundred and fifteen years the armed forces of the United States "have been landed on foreign soil for the protection of the lives and property of American citizens abroad on more than one hundred occasions." From the Aegean islands to Manchuria and from Mexico to the Falklands—

> American seamen and marines have been sent ashore to prevent by force of arms the injury of their countrymen wherever these have been endangered, or to exact reparation for wrongs com-

[1] *Ibid.*, app. p. 65.

[2] Corwin, *op. cit.*, p. 162.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> mitted against them. Sometimes the force employed has been only a dozen seamen in a cutter, who chased a piratical schooner ashore. . . . On other occasions American armies of more than three thousand men have engaged in long campaigns with the people of foreign states, operations which must have been classified as wars if it were not for the fact that the Congress of the United States never recognized them as such by a formal exercise of its unique power to declare war.[1]

The policy of affording protection to American rights and interests abroad dates back to the second administration of President Monroe, 1821-1825. The rapidly increasing American trade with the West Indies was seriously menaced by Caribbean pirates who seemed to act in connivance with Spanish officials in the islands of Porto Rico and Cuba. The American Government, in Monroe's famous presidential message of December 2, 1823, had warned Europe against intervention in Latin America, so it behooved the President to act with extreme caution in suppressing piracy on the Spanish Main. To pursue the pirates on shore and break up their establishments seemed equivalent to unwarranted trespass upon Spanish soil, for the local Spanish authorities were very loath to extend permission to American naval officers to land with adequate armed forces. While the American Government through diplomatic channels was endeavoring to cope with the situation, American naval officers, on their own responsibility, carried on such a ruthless campaign against the buccaneers that by 1826, the waters of the Caribbean were once more safe for American merchantmen.[2]

In 1854, after a lapse of twenty-nine years, the armed forces of the United States again intervened in the Caribbean to protect American rights and interests. In 1852 a controversy had arisen between the government of San Juan del Norte or Grey-

[1] M. Offutt, *The Protection of Citizens Abroad by the Armed Forces of the United States* (Baltimore, 1928), p. 1. See also J. R. Clark, *Right to Protect Citizens in Foreign Countries by Landing Forces* (Washington, 1912), Division of Information, Series M, no. 14.

[2] Offutt, *op. cit.*, pp. 8-17. For interesting correspondence between the United States naval officers and the Spanish authorities during 1822, see *American State Papers, Naval Affairs,* vol. I, pp. 805-12.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

town, on the Mosquito Coast, and the agents of the Accessory Transit Company, an American firm chartered in Nicaragua, with reference to the title to some land situated on the north side of the harbor of Puntas Arenas.[1] In March, 1853, through the mediation of Commander George N. Hollins, of the United States sloop-of-war *Cyane,* a compromise appeared to have been reached, but after Commander Hollins sailed north, the authorities of San Juan burned some of the buildings of the Accessory Transit Company and plundered their contents. They then added insult to injury by permitting a personal affront to be offered to Mr. Borland, the United States Minister to Central America.[2]

When the news of these outrages reached Washington, the American Government ordered Commander Hollins to return to San Juan and obtain redress. When the demands of the American Government were not acceded to by the authorities at San Juan, Commander Hollins, after due warning, bombarded the town and destroyed it. His action in this regard was approved by the American Government, the Secretary of the Navy, in his annual report for the year 1854, specifically declaring: "I could not reprove this commander for his conduct."[3]

Some years later, Hollins was sued in the Federal Courts for the value of the property destroyed during the bombardment of Greytown. He based his defense upon the orders of the President and the Secretary of the Navy, and was vindicated by Justice Nelson in an affirmative opinion:

[1] For an excellent account of the incidents leading up to the Greytown bombardment see M. W. Williams, *Anglo-American Isthmian Diplomacy, 1815-1915* (Washington, 1916), ch. vi. Also Moore, *op. cit.,* vol. II, pp. 414-17; vol. VII, pp. 112-16.

[2] *Sen. Doc.,* 33d Cong., 2d sess., no. 1; also, *Sen. Ex. Doc.,* 33d Cong., 1st sess., no. 85.

[3] *Sen. Doc.,* 33d Cong., 2d sess., no. 1, p. 385. For message of President Pierce see Richardson, *op. cit.,* vol. V, pp. 282-84. The attitude of the British Government relative to the President's message is reflected in Lord Clarendon's conversations with Buchanan, the American minister. J. Buchanan, *Works* (ed. by J. B. Moore, 1908-11), vol. IX, p. 337.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> As the Executive head of the nation [observed Justice Nelson] the President is made the only legitimate organ of the General Government, to open and carry on correspondence or negotiations with foreign nations, in matters concerning the interests of the country or of its citizens. It is to him, also, the citizens abroad must look for protection of person and of property, and for the faithful execution of the laws existing and intended for their protection. For this purpose the whole Executive power of the country is placed in his hands, under the Constitution, and the laws passed in pursuance thereof.
>
> Now, as respects the interposition of the Executive abroad, for the protection of the lives or property of the citizen, the duty, must of necessity, rest in the discretion of the President. Acts of lawless violence, or of threatened violence to the citizen or his property, cannot be anticipated or provided for; and the protection, to be effectual or of any avail, may, not infrequently, require the most prompt and decided action. Under our system of Government, the citizen abroad is as much entitled to protection as the citizen at home.[1]

James Buchanan was the American minister to the Court of St. James at the time of the Greytown bombardment, and he was so impressed with the dangers of the situation that he promptly informed the British Government of his belief that Hollins had acted without express authority and that his act would be disavowed by the American Government.[2] Later, upon instructions from Secretary of State Marcy, he was compelled to defend the bombardment, but the affair made a deep impression upon his mind, and when he became President in 1857, he was exceedingly wary of encroaching on the legislative domain in regard to the war-making powers. The following excerpt from his presidential message to Congress, December 6, 1858, with reference to the unsatisfactory situation in Nicaragua, is typical:

> The executive government of this country in its intercourse with foreign nations is limited to the employment of diplomacy alone. When this fails it can proceed no further. It cannot

[1] 4 *Blatchford*, 451, 454.

[2] Buchanan, *op. cit.*, vol. IX, p. 248.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> legitimately resort to force without the direct authority of Congress, except in resisting and repelling hostile attacks. It would have no authority to enter the territories of Nicaragua even to prevent the destruction of the transit and protect the lives and property of our own citizens on their passage.[1]

Such a "do nothing" policy as that outlined by President Buchanan would little suit a rapidly growing nation like the United States with its expanding interests in the Caribbean.[2] After her easy victory over Spain in 1898, America felt that the Caribbean countries should be under her special protection, and she acted accordingly. In the spring of 1912, word came to the American Government that American interests were imperiled in Cuba because of internal disorders. When President Gomez assured the United States that the disturbances in Cuba would be quickly suppressed, Secretary of State Knox made the following illuminating reply: "This Government does not undertake first to consult the Cuban Government if a crisis arises requiring a temporary landing somewhere to protect life and property on the broad principles of international practice. You will clearly explain all this orally to President Gomez." [3]

Subsequent intervention by armed forces of the United States in Haiti, Santo Domingo, Mexico and Nicaragua has been based upon the right of affording protection to American lives and property. The extent and duration which intervention may reach were clearly shown in the action taken by President Coolidge in support of the Diaz Government in Nicaragua.[4]

[1] Richardson, *op. cit.*, vol. V, pp. 516-17.

[2] See generally, C. L. Jones, *Caribbean Interests of the United States* (New York, 1916); D. G. Munro, *Five Republics of Central America* (New York, 1918); S. Nearing and J. Freeman, *Dollar Diplomacy* (New York, 1925); and J. W. Garner, *American Foreign Policies* (New York, 1928).

[3] *U. S. Foreign Relations,* 1912, p. 250. For the correspondence relative to this outbreak see *ibid.*, pp. 244-68.

[4] American policy in the Caribbean is sharply criticized in Nearing and Freeman, *Dollar Diplomacy,* and in J. W. Garner, *American Foreign Policies.* With special reference to American policy in Nicaragua see C. W. Hackett, *Current History,* February, 1927, pp. 734 *et seq.;* I. J. Cox, *World Peace Foundation Pamphlets,* vol. X, no. 7; H. L. Stimson, *American Policy in Nicaragua* (New York, 1927).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

7. *The Power to Proclaim Blockades*

On April 19, 1861, the President proclaimed a blockade of the ports of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana and Texas. On April 27 he issued a second proclamation of blockade which applied to the ports of Virginia and North Carolina.[1] The constitutional basis of this power to proclaim blockades is given a detailed discussion in a little-known memorandum of Secretary of State Seward, dated April 18, 1861:

> In considering the authority of the President to blockade the ports of the so-called seceded States, it would seem that the clause of the Constitution which vests Congress with the right of declaring war, is the only one by which that authority may be supposed to be restricted. The question is novel, because the *quasi* war with France, during John Adams' Administration, the war with Great Britain of 1812, and the Mexican War, which are all we have been engaged in since the origin of the Government, were foreign wars, previously authorized by Congress.
>
> Although Congress has the exclusive right to *declare* war, it may be contended with some plausibility, that the President might, in an emergency at least, blockade even the ports of a foreign country, because blockade merely is not necessarily war, and such a measure might, under obvious circumstances, be deemed preferable to war for obtaining redress.
>
> The commentators on the Constitution, as well as that instrument itself, are quite silent on the subject of blockade. This is because that is ordinarily a measure incident to war, and the Executive has an undoubted right to employ it in the event of a declaration of war by Congress. It is not clear, however, that the apparently exclusive war-making power conferred upon Congress, was intended to be limited to hostilities to be begun by the United States, and not to those in which they are called upon to defend themselves from invasion or domestic violence.
>
> If the Executive government has the right during the recess of Congress, to employ the public force in defence of the public property, to suppress insurrection or repel invasion, it must

[1] Ed. McPherson, *Political History of the United States* (Washington, 1865), p. 149.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

regard this as war brought on by inevitable necessity, and a war which carries with it all the incidents of that condition according to public law. Can it be doubted that one of the most effectual and at the same time one of the most humane of these incidents, is the power of blockade?

The expediency of exercising the power, under existing circumstances, would seem to be little questionable. It would not materially interfere with any interests of the States which have not claimed to have seceded, for as the productions of those States would, if prevented from leaving their ports, find a market in the others or in foreign countries, by being conveyed to the other States through internal channels, and as that conveyance would seldom be more costly than if those productions were exported from the former States, the charge to the consumer in this country would not be materially enhanced, nor would the employment of American shipping in the freighting business be diminished.

. . . The efficacy as well as the necessity of a blockade to prevent importations from abroad, and thereby secure that uniformity in duties thereon which the constitution requires, appears to be too plain for extended remark. Without a blockade, how can even arms and munitions of war be kept out of the rebellious states, especially in view of the notorious facts that they have sent large orders to Europe for them, and that they are constantly furnished with them, in large quantities, from the north?

A single steamer off each of the ports of Galveston, Savannah, Apalachicola, Mobile, New Orleans, and Galveston, would, it is believed, suffice to impart to the blockade that efficiency which the public law requires.

The war upon us is a war of defence and self-preservation. At such a juncture, it would seem to be the duty of those entrusted with the command of the army and navy, so to construe their power, under the constitution, as to direct the employment of those forces, within the rules of civilized warfare and its incidents, as to secure a peace with all practicable energy and vigor.[1]

The Supreme Court of the United States, in the so-called

[1] Special Missions, vol. 3, Department of State.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Prize Cases, sustained the President's power to proclaim a blockade, and it reckoned the beginning of the war from the date of his proclamations. During the trial of these cases before the court it was argued that war must begin with a declaration; Congress alone has the power to declare war; the President's power to suppress an insurrection is not equivalent to the war power; and his right to promulgate a blockade order could become valid only after war has been made legal through a declaration by Congress. The Supreme Court refused to heed these objections. A civil war is never solemnly declared:

> . . . it becomes such by its accidents—the number, power, and organization of the persons who originate and carry it on. When the part in rebellion occupy and hold in a hostile manner a certain portion of territory, have declared their independence; have cast off their allegiance; have organized armies, have commenced hostilities against their former sovereign, the world acknowledges them as belligerents and the contest is war.[1]

Furthermore, the court was of the opinion that if a war be made by invasion of a

> foreign nation, the President is not only authorized, but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war.[2]

With special reference to the President's proclamation of a blockade the Court observed: "The proclamation of blockade is itself official and conclusive evidence to the court that a state of war existed which demanded and authorized a recourse to such a measure, under the circumstances peculiar to the case."[3] Finally, the court delivered the opinion that the President had a right, *jure belli,* "to institute a blockade of ports in possession of the States in rebellion, which neutrals are bound to regard."[4]

[1] 67 U. S. Reports, pp. 666-67.

[2] *Ibid.,* p. 668.

[3] *Ibid.,* p. 670.

[4] *Ibid.,* p. 671. See also Randall, *op. cit.,* pp. 48 *et seq.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The decision of the Supreme Court in the *Prize Cases* indicated the willingness of that tribunal to recognize realities: with a national enemy in arms against the federal government it behooved the federal judiciary to assist the Executive in the efficient conduct of hostilities. Such an attitude has been typical, for the judiciary has always been loath to interfere in any way in the settlement of so-called "political" questions. And as between the Executive and Congress it has usually been recognized by the latter that the successful prosecution of war demands "in the highest degree the promptness, directness and unity of action . . . . which alone can proceed from the Executive."[1] It is apparent, therefore, that not only does the Executive largely control the events that lead to hostilities, but even during the course of a conflict resulting from his policies his rôle is still the dominant one. Although Congress is empowered to prescribe the size and equipment of the military establishment, yet it is the Executive alone, by virtue of his powers as commander-in-chief, who decides just how the war shall be waged.

CHARLES C. TANSILL

AMERICAN UNIVERSITY
WASHINGTON, D. C.

[1] Charles E. Hughes, *The Supreme Court of the United States* (New York, 1928), p. 103.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

THE OUTLOOK OF THE CONTINENTAL AMERICAN COLONIES ON THE BRITISH WEST INDIES, 1760-1775

OF the importance of the intercolonial trade in the eighteenth century to the North American and West Indian colonies much has been written. But little attention has been given to an interesting aspect of this commercial intercourse, the part it played in the everyday life of the northern colonists and its influence on their opinion of their fellow subjects in the West Indies, particularly during the critical years preceding the outbreak of the Revolutionary War.[1]

Many besides the merchants trading to the islands had a personal, though less direct, interest in news from the Caribbean. The farmers of the "bread" colonies, the shipbuilders of New England, the fishermen and seamen of the port towns were as much affected as the merchants of Boston and Philadelphia by any circumstance which helped or hindered the development of the West India trade.[2]

Some idea of what this trade meant in the daily life of the mainland ports can be gathered from the lists in the weekly

[1] The following manuscript sources, cited below, have been found extremely useful in the preparation of this study: (1) Library of Congress: the Stephen Collins Papers, I–XXVI, containing the correspondence of William Barrell of Newport and Philadelphia, a man with many connections in New England and the West Indies. (2) Historical Society of Pennsylvania: Letterbook of Daniel Clarke, 1760-64; Clifford Letterbooks, XXVII–XXIX; Clifford Correspondence, II–IV; Mifflin and Massey, Ledger A; Pemberton Papers, XIV–XXVIII; Letterbook of Thomas Riche, 1750-64; Letterbook of John Swift, 1747-53. (3) New York Public Library: Letterbook of Philip Cuyler, 1755-60; Letterbooks of Van Cortlandts, 1762-69, 1771-92. The Pinfold MSS. (Library of Congress), which include two letterbooks (1756-64, 1764-66) of Governor Pinfold and the Minutes of the Council of Barbados, 1756-67, are useful for the light they throw on the state of that island.

[2] The intercolonial trade was carried on almost entirely in colonial-built and colonial-owned shipping. The Newfoundland fisheries and the slave trade with West Africa largely depended on West India rum and molasses.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

newspapers of the vessels entered in or cleared for departure. In New York and Philadelphia, the number of vessels trading directly with the West Indies was a considerable proportion of the total. In New York, for instance, in the week ending February 4, 1760, of twenty-five ships outward bound, ten were going to the West Indies. A week later, five out of a total of seventeen had sailed for the same destination.[1] On August 25, the arrival of eleven vessels was announced; of these, four came from Jamaica. On the same date, four were sailing for Jamaica, one for Barbados, one for Antigua and one for St. Kitts; that is, seven out of the fourteen ships sailing were going to the West Indies.[2] On July 15, 1764, six of the eleven ships that had arrived at Philadelphia during the previous week had come directly from the West Indies, which was the destination of nine of the twenty-seven outgoing vessels.[3] The *Pennsylvania Gazette* of December 20, 1764, announced the arrival of fifteen ships; six of these came direct from the West Indies. Of the thirty-nine outgoing vessels, twenty were sailing to the Caribbean islands.

A typical week's entries and departures at Piscataqua were those for May 14, 1767. Ten vessels arrived from the West Indies, two from North Carolina; four sailed for the islands, two for Connecticut.[4]

At Boston, the number of direct sailings to and from the West Indies was much smaller than from the New Hampshire port, and generally smaller than from New York and Philadelphia. For instance, on March 16, 1761, eleven vessels from Connecticut and three from Europe are reported as having arrived, while ten were sailing for North American ports and two for Europe. On May 18, two vessels cleared for the West Indies, while of the thirteen others, all but one sailed for continental ports.[5] But this coasting trade formed an integral

[1] *New York Gazette*, 1760.

[2] *Ibid.*

[3] *Pennsylvania Gazette*, 1760.

[4] *New Hampshire Gazette*, 1767.

[5] *Boston Gazette*, 1761.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

part of the North American, and particularly the New England, trade with the West Indies.[1] The coasting vessels called at Philadelphia, Norfolk and Charleston to exchange their fish and rum for cargoes of beef, pork, rice and lumber.

Partly because it was so often a port of call for New England and Philadelphia vessels on their voyages to and from the West Indies, there was constant direct communication between Charleston and the islands. In its issue of February 16, 1760, the *South Carolina Gazette* announced the arrival of thirteen vessels during the previous week; three of these had come from the West Indies. Of the twenty-one vessels cleared outwards, four had sailed for the islands. In the week of February 2-9, 1765, three vessels arrived from Jamaica, one from Antigua. Ten had sailed; of these two were going to Barbados, one to Jamaica, and one to the Leeward Islands.[2]

Direct sailings between New York and Barbados seem to have been comparatively rare. John Watts of New York wrote to a friend in Boston in 1763 to acknowledge the receipt of a letter and enclosure "which I must send to Philadelphia for a conveyance to Barbados as we have little or no intercourse to that island from hence." "Philadelphia", he added, "has a great deal."[3] With Jamaica, on the other hand, New York seems to have been in close touch.[4]

A well established merchant of Boston or Philadelphia did not usually himself venture to the West Indies to sell his wares. He entrusted that task to an agent in the island, to a supercargo, or to the captain of the ship. But he might in his day have filled any one of these rôles.[5] While it is true that

[1] C. M. Andrews, "Colonial Commerce", *Am. Hist. Rev.*, vol. XX, p. 43. *Cf. Commerce of Rhode Island* (2 vols., *Mass. Hist. Soc. Coll.*, vols. 69 and 70), vol. I, pp. 133-34, 144.

[2] *South Carolina Gazette*, 1765.

[3] *Letterbook of John Watts, N. Y. Hist. Soc. Pub.*, vol. 61 (New York, 1928), p. 113; *cf. ibid.*, pp. 17, 81, 130.

[4] It has, of course, to be remembered that of vessels whose destination was given as one of the British West Indies, many were undoubtedly engaged in the illegal trade with the foreign islands; *cf.* Letterbook of Philip Cuyler: Cuyler to T. Durham, Feb. 20, 1760; Cuyler to Richards and Coddington, June 2, 1760.

[5] E. g. William Hartshorne went as supercargo to Antigua in 1763; was resi-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the captains of the West Indian traders very often had to be salesmen and buyers, particularly in the African trade, the continental merchants commonly had agents resident in the different islands.[1] These agents seem to have been of two kinds: either members of the American firm settled in one or other of the islands for a few years, or of an independent merchant house. Aaron Lopez, the wealthy Rhode Island merchant, sent his son-in-law, Isaac Pereira Mendes, to represent him in Jamaica, and when Mendes proved thoroughly unsatisfactory, replaced him by Benjamin Wright.[2] Two members of the Livingston family lived in Jamaica.[3]

In many cases, the agent was a merchant trading on his own account, for whom the American firm acted on the continent. Thomas Clifford's extensive business with Barbados was very largely conducted through such independent firms.[4] Both sides did "order" and "consignment" business. John Watts wrote to Gedney Clarke, Jr., of Barbados in 1765, offering to act as agent, "should any of your friends be inclinable to ship rum to the northward in the fall . . . ", and added, "I should not dislike being concerned in a cargo of about a hundred or a hundred and twenty hogsheads myself." He told his corres-

dent agent and partner there of Captain John Harper, 1765; and was established in business in Philadelphia, 1767. Mifflin and Massey Ledger A, p. 211; Clifford Corr., IV, p. 145; *Pa. Mag. of Hist. and Biog.*, vol. XXVIII. Thomas Riche went as supercargo to St. Croix in 1754, then settled in Philadelphia. His brother John, after some years as master of a sloop trading to the islands and Halifax, set up as resident agent in the West Indies. Letterbook of Thomas Riche, April 23, 1754; August 5, December 20, 1758; 1764.

[1] Even with a resident agent, merchants did not always consign their goods to him, but to the captain or a supercargo, who was usually advised to consult with the agent.

[2] *Commerce of Rhode Island*, vol. I, pp. 182-260.

[3] Henry Livingston, sixth son of Philip, Second Lord of the Manor of Livingston; and Philip his nephew, son of Philip Livingston, "The Signer": E. B. Livingston, *The Livingstons of Livingston Manor* (New York, 1910), pp. 531, 560. Henry Livingston was particularly active in assisting captains in difficulties with the Jamaica prize court. Letterbook of Philip Cuyler: Cuyler to Richards and Coddington, March 25, 1760; *Commerce of Rhode Island*, vol. I, pp. 85-86; Clifford Corr., III, p. 31.

[4] T. Clifford is a case of a merchant who "specialized" as it were in trade with one or two islands. Most of his correspondence was with Barbados and Antigua. With Jamaica he had practically nothing to do.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

pondent that he had sent instructions to Philadelphia to dispatch the two dozen hams for which he had written.[1]

Business between the mainland and the Caribbean was not only a matter between merchants. Sometimes the northern merchants dealt directly with the planter. For example, Thomas Clifford was requested by a Robert Burrows of Barbados to ship to him, with the net proceeds of one hogshead of spirit "made for a gentleman's use here" and four barrels of Muscovedo, goods so various as Burlington pork, brown bread, a pair of black breeches and three white hats, one of which must be "eight inches wide in the crown to sit deep on the head."[2] Or on the arrival of a vessel from the islands, a Philadelphia merchant would find some lady, on the recommendation of a friend, had sent him a hogshead of rum, or a parcel of gloves to sell for her. This kind of business often brought more worry than profit; the articles sent did not please, or were not exactly what had been ordered. On one occasion, Thomas Clifford tried to pacify an irate dame in Barbados by assuring her that "I took as much pains to oblige thee in getting the several articles thou wrote for as if thou hadst been the Governor's lady."[3]

A great number of the merchants had been at one time or another to the West Indies as supercargoes.[4] It was almost a necessary part of a young merchant's training; very often it was his first independent venture after his apprenticeship was over. At a supercargo, it was his business to dispose of the goods consigned to him in the best market, and to buy a return cargo. To do this meant, very often, going from one island to another, getting to know the merchants, the markets and the people. A letter written by William Barrell from Antigua

[1] *Letterbook of John Watts,* pp. 5, 360, 361, 366.

[2] Clifford Corr. III, p. 143. Some of the merchants on the islands owned plantations; sometimes a merchant entered into partnership with a planter. *Cf.* Clifford Letterbook, XXVII, June 6, 1760; *ibid.,* XXVIII, Aug. 20; Pemberton Papers, XVII, p. 39.

[3] Clifford Letterbook, XXVII: Clifford to Helena Clarke. *Cf.* Stephen Collins Papers, XVII, May 19, 1774: M. Leland to W. Barrell.

[4] E. g. Ezekiel Edwards of Pemberton and Edwards, Philadelphia; George Champlain, partner of Christopher Champlain, Newport, R. I.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

gives some idea of the opportunities which the North Americans had to become acquainted with the West Indians, when on a business visit to the islands. "At breakfast", he wrote, "I waited on Mr. Willock who with unexpected frankness assured me of his friendship and the next day evinced it in terms stronger than words by introducing me to dine at Colonel Farley's with a number of planters, and on Tuesday devoting it wholly to my interests rode over the island with me calling on a number of the first estates." [1]

To go to the islands for a few years, there to make or mend one's fortune, seems to have been the colonial equivalent of going, a century later, to Australia or New Zealand. Young William Barrell, whose hopes of profitable employment at Cape Fear had failed, wrote to his brother John, who was already established in business in Antigua, to inquire what opportunities might be found for him there. Two other brothers, Walter and Theodore, were also in the West Indies. Several years later, William Barrell, now settled in Portsmouth, wrote to introduce to his brother Walter a Mr. Henry Eve, "a clever but unfortunate man", going to the West Indies to rehabilitate himself.[2]

Not only young merchants but enterprising young clerks [3] and artisans looked toward the islands for opportunities for advancement. Thomas Clifford assured a correspondent that it would not be difficult to get a capable young shipwright to go to Barbados.[4] On another occasion, he wrote to William Smith in St. Kitts to ask what openings might exist there for a skillful young sailmaker just out of his indentures.[5] Young craftsmen had, however, fewer chances than young merchants of profitable employment in the West Indies, because they had to compete with skilled slave labor. A Philadelphia carpenter told his friends that "as to bettering myself, there is ten

[1] Stephen Collins Papers, VIII, to Theodore Barrell, Feb. 2, 1769. *Cf. ibid.*, XVII, Dec. 5, 1773.

[2] *Ibid.*, II, J. Barrell to Wm. Barrell, May 17, 1762; *ibid.*, IV, Dec. 11, 1766. *Cf. Commerce of Rhode Island*, vol. I, pp. 374-75.

[3] E. g. B. Franklin, *Autobiography* (New York, 1901), p. 35.

[4] Clifford Letterbook, XXVII, Aug. 20, 1763, to Jonas Martindale.

[5] *Ibid.*, June 14, Aug. 29, 1768. *Cf.* Pemberton Papers, XXIII, p. 94.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

chances at home where there [is] one in these parts" (St. Eustatius).[1]

The story of the Gedney Clarkes is an example of North American success in the West Indies. Gedney Clarke, Sr., came from Salem to Barbados. In 1752, he was collector of the customs and of the 4½ per cent duty; by 1759 he was a colonel in the island militia and engaged in trade on a large scale.[2] He possessed extensive estates in Barbados and Demarara, and was a man of such wealth and position that in 1763 he was able to fit out three armed vessels at his own expense and to pursuade the captain of a man-of-war to lend him a hundred sailors and marines for the defense of his Demarara plantations, then threatened by a negro rising.[3] His son, Gedney Clarke, Jr., became surveyor-general of the customs of Barbados in 1764. In 1766 he was a member of the Assembly and subsequently of the Council. He inherited his father's estates in Barbados and Demarara and in addition had plantations in Grenada and Tobago.[4] In 1774, when he was in financial difficulties, it was reported in Philadelphia that his assets would fall short of his debts by over £100,000, "the greatest failure that ever happened here."[5]

The constant commercial intercourse between the mainland and the islands in the Caribbean led to many other ties between the two parts of the empire. Americans had estates in the West Indies and West Indians owned property on the mainland. Aaron Lopez of Rhode Island had a plantation in Antigua. Thomas Benson of Jamaica held lands in St. Kitts and Philadelphia.[6] The Middletons, the Bulls and the Colletons

[1] Pemberton Papers, XXVI, p. 4.

[2] *N. E. Hist. Gen. Register,* vol. XXVI, pp. 294-95; *Acts of Privy Council,* Colonial Series, vol. III, nos. 170, 171; Clifford Corr., II, p. 191; *ibid.,* III, p. 9; Clifford Letterbook, XVII, T. Clifford to J. Maynard, July 17, 1759; same to Lascelles and Maxwell, Aug. 9, 1759.

[3] Egerton MSS., Library of Congress, 1720 *et seq.,* 10, 17.

[4] Pinfold Letterbook, 1756-64, p. 358; *Acts of the Privy Council* (Colonial Series), vol. III, p. 784; Pinfold MSS., Minutes of Council, 1766-67, esp. Oct. 2, 1765 and Jan. 20, 1767.

[5] Pemberton Papers, XXVI, p. 75. He died some time before March, 1778.

[6] *Commerce of Rhode Island,* vol. I, p. 62; T. Benson, Letterbook, Pa. Hist. Soc., p. 4.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of South Carolina had plantations in Barbados and Jamaica.[1] Many North American families had sons or daughters married to West Indians.[2] Young men like Philip Livingston, whose business kept them in the islands, married there.[3] Others again returned to their homes for brides and took them back to the islands.[4] Sometimes the temporary removal of a family to the West Indies resulted in the marriage of a daughter who remained behind when her parents returned to the Continent.[5] West Indian heiresses were as highly regarded in some North American circles as in England, and young men setting out for the islands were advised not to miss any chance of marrying a rich Creole.[6]

It is not perhaps surprising that those who had such close business and family connections with North America should look to American institutions for the education of their children. In the West Indies, the only school of any standing was Codrington College in Barbados, and the children of most planters were sent to England to be educated.[7] But to those who could not afford to send their children to Europe or who had an American, rather than an English background, the schools and colleges on the mainland offered a solution for their educational problem.[8]

[1] *S. C. Hist. Gen. Mag.*, vol. I, p. 240; vol. VIII, pp. 149-50; vol. XI, p. 130.

[2] E. g. W. Somervill of St. Kitts to Miss Sally Legare, Charlestown; J. Irving, M.D., of Jamaica, to a daughter of Jacob Motte, treasurer (1766) of South Carolina.

[3] E. B. Livingston, *op. cit.*, p. 560. References to such marriages are scattered through the correspondence of the time, e. g. Daniel Clarke, Letters and Invoices, p. 112.

[4] E. g. notice in *Maryland Gazette*, Nov. 15, 1764, of marriage of Darby Lux of Barbados, formerly of Maryland, to Miss Rachel Ridgeley of Baltimore County.

[5] Clifford Corr., IV, p. 63.

[6] Letterbook of Thomas Riche, Sept. 13, 1764; Stephen Collins Papers, VI, W. Barrell to T. Barrell, Sept. 17, 1766.

[7] V. T. Harlow, *Christopher Codrington* (Oxford, 1928), p. 216; L. J. Ragatz, *The Fall of the Planter Class in the British Caribbean, 1763-1833* (New York, 1928), p. 22.

[8] It was usually the children of merchants or those connected with merchants who came to North America; e. g. T. Cadogan, Jr., who came to the Phila-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Like the merchants of London and Bristol, those of New York or Philadelphia were, on occasion, charged with the task of supervising the education of the children of their West Indian correspondents.[1] Henry Neblett of Barbados wrote to Pemberton and Edwards to inquire, on behalf of a relative "who had the mind to fit" his young son "for the physical tribe", "how much per year he may be taught and maintained for" in Philadelphia "and whether you Gentlemen would be so obliging as to take him under your care, not into your house but under your eye at school."[2] Thomas Clifford told the father of a young Barbadian that he had "placed him to board just by the Academy and for his accommodation (which will be in a manner suited to his circumstances and where several other children under my care are placed) I have to pay thirty-five pounds a year . . . he hath a free intercourse at my house and I shall give him such advice as from time to time I shall think he stands in need of."[3]

Some of those interested in education on the mainland hoped to gain West Indian support, both in money and students, for their projects. Dr. Witherspoon, for example, published in 1772 an eloquent "Address to the inhabitants of Jamaica and West India Islands on behalf of the College of New Jersey." In this, without in any way desiring to minimize the value of an English education, he pointed out the advantages of a preliminary training at an institution where work and morals would receive greater emphasis than at an English university.[4] The response was not as great as Witherspoon may have hoped.

delphia medical school, was related to the Sandifords, correspondents of the Pembertons; Pemberton Papers, XXVII, pp. 91, 129. May it not have been Alexander Hamilton's connection with the Crugers that brought him to the mainland?

[1] T. Clifford had at one time or another children from Barbados and the Bahamas under his care. T. Riche took charge of two boys from St. Croix and the Pembertons of the medical student already mentioned.

[2] Pemberton Papers, XXV, p. 109.

[3] Clifford Letterbooks, XXVII, T. Clifford to J. Jones, July 25, 1761.

[4] J. Witherspoon, *Works* (1802), vol. IV, pp. 185-201. In the same year, Dr. Hugh Williamson issued an appeal to "The Humane and Liberal Friends of Learning, Religion and Public Virtue in the Island of Jamaica", on behalf of the Academy of New Ark (Delaware). *N. J. Archives,* XXVIII, p. 165.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Nevertheless, a few West Indian students did make their appearance at the Colleges of New Jersey and Philadelphia and at King's College in New York.[1] To Philip Fithian, one advantage of being at the College of New Jersey was "the opportunity in some small degree of acquainting myself with mankind, by observing the conduct and temper of the students of this seminary; which is filled with young men not only from almost every province in this continent; but we have also many from the West Indies and some few from Europe. So that from the difference in their early education, their manner is extremely different, which makes our observations on them, both agreeable and profitable."[2]

Others besides the merchants, whose experience as supercargoes or residents had given them personal knowledge of the islands, had opportunities to know the West Indies and the West Indians. There was, apparently, a considerable amount of traveling between the islands and the continent totally unconnected with business. North Americans, like George Washington's brother Lawrence and young Charles Pemberton, went south in search of sunshine and health.[3] Many West Indians came to the mainland to restore constitutions broken by hard drinking and a bad climate.[4] "I am afraid, at last", said Dr. William Sandiford to his friends in Philadelphia, "you will be obliged to limit emigration from this part of the world, so many now declaring for Philadelphia. . . . I would advise Adam Chart to begin another House directly and call it the Barbados Hotel, putting up for a sign, the worn-out West Indian, dying of a dropsy from intemperate living."[5] Whether in America or the West Indies, the invalids, with

[1] V. L. Collins, *President Witherspoon*, vol. I, p. 143; *New York Gazette*, Oct. 24, 1774; *N. Y. Gen. and Biog. Record*, vol. XXV; Pemberton Papers, XXVII, p. 91.

[2] P. V. Fithian, *Journal and Letters* (Princeton, 1900), p. 17.

[3] George Washington, *Diaries*, I, pp. 27-29; Pemberton Papers, XXIII, pp. 102, 104, 111.

[4] *Ibid.*, XXV, p. 33; XXVI, pp. 78-79, 113, 118; XXVII, pp. 82, 86; Clifford Corr., II, pp. 161-62; *Boston Gazette*, Sept. 18, 1769.

[5] Pemberton Papers, XXVI, p. 77.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

their families, were always entertained most hospitably and an acquaintance so begun was often continued by correspondence.[1]

The European traveler has always been a familiar figure in America, but in the years prior to the outbreak of the Revolutionary war, the curious came also from the West Indies. There was, for instance, Mr. Gittens, who was recommended to Thomas Clifford as "a young gentleman of good family and character in Barbados; he has lately been in Europe and is desirous of seeing America";[2] there was Mr. Robert Threlkeld of Grenada, "the particular friend and acquaintance" of Theodore Barrell, who came "on a tour through America";[3] and there was lively young Mr. Corr, also from Grenada, who so thoroughly enjoyed the society of New York and Philadelphia.[4]

It is possible to see how this social intercourse would make the islands something more than mere names to persons outside of the business circle and how such references to the West Indies as appeared in the press would gain in interest to them. There was, indeed, scarcely an issue of a port paper in which the names of one or more islands were not mentioned. Advertisements of the arrival of neat parcels of West India or Jamaica rum were followed by notices of ships about to sail with passengers and freight to the Caribbean.[5] In the news columns was reported the safe arrival of the North American ships at their West Indian destination.[6] Long accounts of the negro rising of 1760 in Jamaica,[7] the Bridgetown fires of

[1] E. g. Dr. W. Sandiford and Jas. Pemberton corresponded regularly until the doctor's death in 1775. They discussed public questions with great freedom, and Pemberton sent his friend much of the pamphlet literature which appeared during that stormy period.

[2] Clifford Corr., III, p. 243.

[3] Stephen Collins Papers, XVI, T. Barrell to W. Barrell, Nov. 7, 1773.

[4] *Ibid.*, Michael Corr to W. Barrell, July 7 and 19.

[5] E. g. *Maryland Gazette,* 1764, Oct. 11, May 24, June 4.

[6] *Ibid.*, May 3; *New York Gazette,* Feb. 11, 1760; *South Carolina Gazette,* Feb. 9, 1765. Under the heading "America" or "American Intelligence", the *South Carolina Gazette* gave the week's news from the island as well as the mainland colonies, e. g. April 27, Aug. 26, 1765; Feb. 2, 1767.

[7] *Boston Gazette,* 1760, July 28, Aug. 11.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

1766[1] and the hurricane in St. Kitts in 1772[2] were varied by lighter items, such as a breach of promise case in Jamaica in which the damages were assessed at the enormous sum of £3,400.

As a result of the close relations, commercial and other, between the West Indies and the mainland, it was natural that the continental colonists should have some clear-cut ideas about their fellow subjects on the Caribbean. It seemed that there ought to be no cause for friction between them. The one produced what the other needed; the one was in fact, the economic complement of the other. But unfortunately for imperial harmony, quite early in their history the British West Indies proved unable either to supply the needs of the ever-expanding market for molasses and rum in North America, or to buy from the northern colonists their increasingly large surplus of provisions. As early as 1681, the French settlers in Guadeloupe and Martinique sought Colbert's permission to trade with the New England merchants, whose demands for molasses could not be satisfied by the English islands.[3] The northern colonists were very ready to trade, and by the early years of the eighteenth century a flourishing business between the foreign West Indian islands and the American mainland was carried on. Such a trade ran counter not only to the dominant commercial theory of the day, but to the interest of the British planter, who found the price of North American goods maintained at a high level by the wider market open to them, and the price of his molasses and rum, raised as it was by the duties of one kind and another,[4] too high to attract the American buyers. He considered himself deprived of the profit to which he thought he was legitimately entitled and which he would have reaped, had the American market been reserved to him. Even his position in the European market was threatened by

[1] *New Hampshire Gazette,* 1767, Feb. 20; *Maryland Gazette,* 1766, June 7, 26.

[2] *New Hampshire Gazette,* 1772, Oct. 9 and 16; Governor Penn issued a proclamation appealing for help for the people of the Leeward Islands, *Pa. Archives,* 4th Series, vol. III, p. 535.

[3] Mims, *Colbert's West Indian Policy* (New Haven, 1912), pp. 222, 224.

[4] F. W. Pitman, *Development of the British West Indies, 1700-63* (New Haven, 1917), p. 302.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the quantities of sugar imported directly from the foreign islands.[1] When it was pointed out that, even had the market been reserved as he desired, the British West Indies could not satisfy the North American demand, he insisted that were he and his fellows certain of a good price for their commodities, they could very considerably increase the production of the British islands. But the northern colonists very naturally refused to destroy their present prosperity for hypothetical future advantages to themselves and the British planter, and continued to trade energetically with the French and Spaniards.

The issue was fought out in England and after a four years' struggle, the West Indian planters secured the paper victory of the Molasses Act (1733). In a certain sense, the very fact that the act was not enforced embittered the feeling between the two parties. For, during the next thirty years, the continental colonists found that they must be always on their guard to defeat any attempts on the part of the planters to obtain the enforcement of the law. Such attempts, or rumors of such attempts, formed a frequent subject of correspondence between the colonial agents and their northern constituents. In 1750, the planters made a determined effort to secure the absolute prohibition of all intercourse with the foreign sugar settlements in America. As the Board of Trade regarded the proposal with little favor,[2] the New England colonists were not called upon to make strenuous efforts to defeat it. Yet such efforts as they made cost them over four hundred pounds.[3] In 1754, the Rhode Island agent wrote to Governor Green that he feared that in the "next sessions of Parliament . . . something will be on the carpet about the West India trade about which I shall be on the watch."[4] Nine years later, in Sep-

[1] Abraham Redwood's London agents wrote (1760) that they had had great difficulty in disposing of his sugar from Antigua. "Our market for our natural sugar has for some time been dull owing to the foreign demand not being so spirited as expected, by supplies from Monte Christi and Guadaloupe to foreign marts immediately." *Commerce of Rhode Island*, vol. I, p. 81.

[2] Pitman, *op. cit.*, pp. 298-301.

[3] *Correspondence of Rhode Island Governors, 1773-75* (Cambridge, 1902-3), vol. II, p. 132.

[4] *Ibid.*, p. 144; *cf.* p. 146.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tember, 1763, Joseph Sherwood wrote to Governor Hopkins of Rhode Island, "I have had intelligence that the West Indian traders are forming a scheme to prevent or abridge the trade of the American colonies to the French West Indies. . . ."[1] And it was the firm conviction of the continental colonists that the Sugar Act of 1764 and the administrative reorganization that accompanied it were the work of "the planting interests". They had come to look on the planters as their enemies.[2]

Professor Van Tyne has pointed out how wide was the social and moral gulf between England and her North American colonies in the pre-Revolutionary period. "The visiting colonist in London was more apt to see the corruptions than the refinements of the metropolitan city." And many besides Franklin contrasted "the extreme corruption among all orders of men in this old rotten State" with "the glorious public virtues so predominant in our rising country".[3] Now in this English society which earned the scorn, dislike and disgust of the North American, the West Indian magnates played a great part. Their wealth and the influence which it enabled them to exercise in imperial politics[4] naturally increased the dislike felt for them in the continental colonies. Thomas Cushing of Massachusetts spoke "of the wealth, power and art of our adversaries, the West Indians".[5] John Dickinson wrote:

[1] *Ibid.*, p. 352.

[2] The prejudice against the West Indians was so strong that John Watts deplored the "impolitic appointment" of Sir Henry Moore of Jamaica as governor of New York. He had nothing to say against the personal character of the governor, "which is not bad for a Governor; but the people will be more jealous of him than of an appointment impartial and disinterested, as they have always looked with an evil eye on the West Indian interest as clashing with and opposing their own." *Letterbook of John Watts*, p. 388.

[3] C. H. Van Tyne, *Causes of the American War of Independence* (London, 1922), pp. 314-21.

[4] L. M. Penson, "The London West India Interest in the 18th Century", in *Eng. Hist. Rev.*, July, 1921; "The Bristol West India Clubs", in the *West India Committee Circular*, May 13, 1920.

[5] Thomas Cushing, letter to Jasper Mauduit, *Mass. Hist. Soc. Pub.*, vol. 74, p. 131.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> There is a vast difference to be made in calculating the gains of any particular branch of business to the *public* and to the *individuals*. The advantages to the last may be small and yet great to the first and the reverse. The Statutes made to restrain the trade of the continent in favour of the islands, seem to tend rather towards promoting *partial* than *general*, interests; and it appears to me no paradox to say that the public would be as great a gainer, if estates here [i. e. in the West Indies] were so moderate that not a tenth part of the *West Indian* gentlemen who now sit in the House of Commons, could obtain that frequently expensive honour.[1]

The character of many resident planters and merchants was little sympathetic to the majority of the continental colonists. They had a poor reputation as business men. The planters compared very unfavorably with their hard-working and frugal French rivals; they were careless and extravagant in the management of their estates, reckless in contracting debts and extremely slow in payment. Then, to make up for their own faults, they wished to penalize the industry of others.[2] Dickinson penned a bitter attack on their selfishness and extravagance. They asked for protection from Great Britain in order to compete on an equal footing with the foreign sugar islands but

> *they never will* "carry on their trade on an equal footing with the foreign sugar colonies", until there is the same moderation in their estates and the same frugality in their living. By a very singular disposition of affairs, the colonies of an *absolute monarchy* [France] are settled on a *republican principle*; while those of a kingdom in many respects *resembling a commonwealth* [England] are cantoned out among *a few lords* vested with despotic power over *myriads of vassals* and supported in the pomp of *Bassas* by *their* slavery.[3]

[1] J. Dickinson, *Political Writings* (Wilmington, 1801), vol. I, p. 58.

[2] *Cf.* Abraham Lopez (Savanna-la-Mar) to Aaron Lopez, refusing to do consignment business because the planters were so slow in paying. *Commerce of Rhode Island*, vol. I, pp. 175-76; *Hist. MSS. Com., Dartmouth*, vol. I, p. 506; Pitman, *op. cit.*, p. 128; Ragatz, *op. cit.*, chs. i, ii, *passim;* George Washington, *Diaries*, vol. I, p. 27.

[3] Dickinson, *op. cit.*, vol. I, p. 61, note.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

As for the merchants, the North Americans generally had a poor opinion of their integrity. "I do not love to do business for a man who takes no care of his own affairs".[1] To men like Henry Laurens, the average West Indian merchant must have been an exasperating agent. "A person cannot be too cautious how he connect himself with a Barbados merchant", wrote young Edwards of Philadelphia, "for many of them keep no books and if they can procure money enough to furnish their tables every day . . . they are entirely regardless how their accounts run on . . . and most of them will bear running for years together without any marks of shame and perhaps promise ten times a day, if you can meet with them so often, that they will pay in an hour." "Take them all together", he concluded, "there is not one in ten fit to be trusted."[2]

Many visiting Englishmen and North Americans were shocked by the social conditions in the islands.[3] The planters appeared to them "a set of dissipating, abandoned and cruel people".[4] "The School of Scandal was never in greater lustre or had more matter to work upon", Dr. Sandiford told his Philadelphia friends on his return to Barbados in 1774. They were, however, "generally allowed to be very hospitable to strangers and this is . . . the most shining part of their characters."[5]

It can, therefore, readily be understood how righteous indignation at West Indian extravagance and frivolity buttressed, in the North American mind, hostility toward their selfish economic policy. Thus the colonists were in the happy

[1] D. D. Wallace, *Life of Henry Laurens* (New York, 1915), p. 45.

[2] Pemberton Papers, XXIV, pp. 22, 45; *cf.* D. Barclay to Pemberton and Reeve. From J. Miller of Antigua, "you may expect to experience more punctuality in his engagements than is generally to be met with in the islands", *ibid.*, XVII, p. 99.

[3] This is probably truer of the continental colonists to the north than to the south of Philadelphia. In Virginia and South Carolina conditions existed somewhat similar to those in the West Indies. Josiah Quincy's remarks on South Carolina might have been made about Barbados or Jamaica. *Cf.* Journal in *Mass. Hist. Soc. Proceedings*, vol. XLIX, pp. 454-63.

[4] *Journal of Nicholas Cresswell* (New York, 1924), p. 39.

[5] Pemberton Papers, XXVI, pp. 78-79; XXIV, p. 23.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

position of feeling that it was not merely their interest, but their duty as moral beings, that led them to dislike the West Indians. Men have always felt that it is satisfactory to be, in Disraeli's words, "on the side of the angels".

During the later stages of the Seven Years' War, when a serious attempt was made to stop the trade with the enemy, many northern merchants added another point to their score against the West Indians. Trade with the foreign West Indies in time of peace, illegal though it was, was regarded as a respectable line of business, and the outbreak of the war did not put an end to it. To many merchants, the only valid argument against it was the danger of capture by an interfering man-of-war. When David Jameson wrote to his Rhode Island correspondent, "I am now trying to voyage to our own colonies", he explained the change in his plans solely on the ground that "trading with the enemy has turned out so very ill."[1] Much of this trade was carried on under cover of flags of truce. West Indians as well as North Americans were extensively engaged in it, as the latter very well knew. Great then was their wrath at the zeal displayed by West Indian privateers in capturing,[2] and certain West Indian admiralty courts in condemning, North American vessels.

An article appeared in the *New York Gazette* of October 6, 1760, describing at some length the sufferings of the Northern colonists at the hands of the French and Indians.

> But when we turn our thoughts and consider the treatment the northern merchants interest and the mariners employed in their service, meet with at Jamaica and New Providence, the inhuman barbarities of Indian savages and all that train of misery and suffering attending a war with perfidious infidels, will appear as small evils. Every ship belonging to any of the northern colonies that can be met with at sea, by men of war stationed at, or privateers belonging to those islands, in whatsoever trade employed, with whatsoever goods freighted, whatsoever port they come from, or are bound to, are immediately seized as their prey and sent into these islands for trial. . . .

[1] *Commerce of Rhode Island*, vol. I, p. 83.

[2] *Pennsylvania Gazette*, Jan. 17, 1760.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> By those mock courts [of Admiralty] northern ships and cargoes to the value of several hundred pounds sterling have been condemned and confiscated; and all who appear there in defense of their property, are forbid to open their mouths and treated with an insolence, practised only by those who have sucked in the principles of tyranny, together with those of slavery.

The excuse for this treatment was that the ships were trading with the enemy; but said the writer, it was well known that Jamaicans were very largely engaged in that trade—were even protected by the men-of-war on their illegal voyages.

A crestfallen and angry New England captain who had been sent into the Jamaica prize court wrote to his owners that there was no chance of saving ship or cargo, "for they condemn everything that's sent in" and "the people here are such villains and so united in these affairs, they appraise the sugar at half the value and take 'em to their own account." He could think of no other way to "get satisfaction but to fit out a small vessel against the Jamaica men who have at least 40 sail vessels running up and down to Hispaniola."[1]

On the whole, therefore, it is probably fair to say that at the time of the Peace of Paris, the attitude of the continental colonists toward the British West Indies was one of suspicion and dislike. If, as is said, ignorance is the first cause of suspicion between peoples, too close an acquaintance with certain aspects of a people's character leads equally surely to the same end. Despite the many family connections between the islands and the mainland, the clash of their economic interests and the differences in social background had fixed a wide gulf between them. Individuals were very good friends, but as the merchant Watts said, "the West India and North American interest is always jarring."

During the years 1760-61, there was much public discussion in England of the terms on which she should consent to make peace with France: which of her conquests should she keep, which surrender? It seemed to be generally agreed that she could not keep both Canada and Guadeloupe, two of her most

[1] *Commerce of Rhode Island,* vol. I, p. 87; *cf.* Clifford Corr., III, p. 23.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

valuable acquisitions. One must be surrendered, but public opinion was sharply divided as to which should be the one. The arguments for and against were ably stated by each side in a series of pamphlets.[1] It was a struggle between the old and the new schools of colonial theorists. Those who wished to keep Guadeloupe held to the traditional opinion that the function of a colony was to supply the mother country with raw materials and commodities which she did not produce herself. England badly needed an addition to the number of her sugar islands. Those who argued for the retention of Canada had accepted the view, then rapidly gaining ground, that those colonies were most valuable which offered the largest market for English manufactures.[2]

North American and West Indian were agreed on the question; both wished to keep Canada. To the North American, there was one all-sufficient reason; Canada in British hands meant greater security. The West Indian did not wish to have a large and wealthy rival brought within the legal boundaries of the empire.[3]

The northern colonists displayed considerable interest in the discussion. Franklin's pamphlet was on sale throughout the provinces as was a *Letter Addressed to Two Great Men.*[4] Clergymen urged the retention of so valuable a conquest as Canada in their thanksgiving sermons for the capture of Montreal.[5] The newspapers gave the latest rumors of the preliminaries agreed on as terms of peace and articles appeared arguing for the retention of Canada.[6]

[1] For an excellent analysis of this pamphlet literature see Pitman, *op. cit.*, pp. 344-51.

[2] G. L. Beer, *British Colonial Policy, 1754-65* (New York, 1907), pp. 136-39; *cf. Letters and Diary of John Rowe* (Boston, 1903), p. 272; John Rutherford, "The Importance of the Colonies to Great Britain", in *Some Eighteenth Century Tracts Concerning North Carolina* (Raleigh, 1927), pp. 114, 122.

[3] Ragatz, *op. cit.*, p. 112.

[4] *Boston Gazette,* Sept. 1, 22, Dec. 22; *New York Gazette,* July 21, 1761; *Pennsylvania Gazette,* Dec. 11, 1760.

[5] *Boston Gazette,* Nov. 24, 1760.

[6] E. g. *ibid.,* June 6, Nov. 24, 1760; *Pennsylvania Gazette,* May 1, 1760, Nov. 26, 1761; *New York Gazette,* July 10, 1760, Feb. 9, 1761; *South Carolina Gazette,* June 27, 1761.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

One of these, a rather amusing essay with an undercurrent of seriousness, suggested that among the "Reasons for Restoring Canada to the French" the following might be considered valid, "lest through a great plenty of beaver, broad brimmed hats become cheaper to that unmannerly sect, the Quakers"; or "that the French may, by means of their Indians, carry on (as they have done for these hundred years past, even in times of peace between the two crowns) a constant scalping war against our colonies and thereby stint their growth; for otherwise, the children might be in time as tall as their mother." And a note was added, "This reason is seriously given by some that do not wish well to the colonies."[1]

The American fear that Canada, like Louisburg twelve years before, would be given up, was reflected in some of the letters of John Rowe of Boston. To Rowe, the conquest of Canada was "the Grand Conquest", "a most glorious event". "I pray God," he wrote, "if a peace, it may not be restored to the French. If it should we shall always on this continent be under continual alarms from the villainous Canadians and barbarous Indians." And again, "I hope every borough in the kingdom will present memorials to His Majesty that he will not consent to its being delivered at the peace, whensoever it shall happen. . . . All the Trade from hence are writing their friends on the occasion."[2] Indeed, to the average North American, especially the New Englander, to weigh Canada against Guadeloupe was simply ridiculous. What could the possession of Guadeloupe offer him to set against the security he would enjoy from Canada's being in British hands? True, Guadeloupe opened a wider legitimate market for rum and molasses, but why pay the exorbitant and unnecessary price of surrendering Canada to obtain what he considered he could get with equal ease, if not equal legality, from Guadeloupe whether in French or in British possession?

The year the war ended, the continental merchants became very concerned at the reports from England of the proposals under discussion there to renew and to enforce the Molasses

[1] *New York Gazette*, May 26, 1760.

[2] *Letters and Diary of John Rowe*, pp. 369-70, 371.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Act. They immediately began to organize opposition. From Boston, Salem, Marblehead, Plymouth, they sent petitions to the Massachusetts General Court, which thereupon appointed a committee to prepare suitable instructions for the colony's agent. The Boston merchants themselves sent representations to England; the Rhode Island government sent a protest to the Board of Trade.[1] The Act, however, was passed on April 5, 1764, and one of its chief results was to embitter the northern colonists against "these overgrown West Indians" to whose influence with the ministry and by whose votes in the House of Commons, "dead votes against the colonies", the renewal of the Act was said to be due. "There was not a man on the continent of America, who does not consider the Sugar Act, as far as it regards molasses, as a sacrifice made of the northern colonies to the superior interest in Parliament of the West Indians."[2]

The Stamp Act of the following year could not be laid to the charge of the West Indies. Henceforward the North Americans were face to face with the English government; no planting interest intervened as a target for their attacks on imperial policy. In the struggles of the next ten years, the continental colonists always wished to receive the support of the West Indian planters and merchants. At times they tried to bring pressure to bear to secure that support; but they do not seem to have considered any kind of formal economic or political alliance, such as those established among themselves by the non-importation agreements or the committees of correspondence.[3]

The Stamp Act Congress was the result of the strong North American desire for united action. No invitation to attend it was extended to the island assemblies.[4] Nevertheless the con-

[1] C. M. Andrews, "Boston Merchants and the Non-Importation Movement", *Col. Soc. Mass. Proc.*, vol. XIX, pp. 166-68; Callender, *Economic History of the United States* (New York, 1909), p. 623.

[2] *Mass. Hist. Soc. Pub.*, 1st Series, vol. I, p. 83; *cf.* "Novanglus" in *Life and Works of John Adams* (Boston, 1850), vol. II, p. 49; Callender, *op. cit.*, p. 133.

[3] For an exception *cf.* pp. 84-85, *infra*.

[4] Hutchinson, *History of the Province of Massachusetts Bay* (London, 1828),

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tinental colonists were keenly interested in the attitude taken by the West Indies toward the Act. They felt that any colony that "accepted stamps" made a breach in what ought to be an unyielding and unbroken colonial opposition. West Indian support would also be of value in the House of Commons.

Evidence of this opinion is to be found in the contemporary press. "To be successful in the opposition to this severe law, all the people who are to be affected by its operation, should be unanimous; and when any of them prove degenerate, it behoves the remainder to resent it by every means in their power."[1] "A Son of Liberty", in summarizing the part played by the different provinces and classes in opposing the act, drew no geographical line between the continental and the West Indian colonists. For instance, speaking of the destruction of stamped paper, he wrote, "Some of the most active and zealous of the people were for destroying the whole at all events and at New York, St. Kitts and Nevis, those Sons of Freedom actually forced their way to a large portion of them which they entirely destroyed."[2]

The newspapers also gave as much information as possible of how the different islands had received the stamps. St. Kitts and Nevis were highly praised for their gallant conduct in destroying them;[3] Bermuda and New Providence were said to have refused to accept them.[4] Military force alone, it was reported, prevented Canada, Nova Scotia and Florida from joining the opposition.[5]

The explosion of anger against Barbados when it was learned that that island was using stamped papers, is perhaps the strongest proof of colonial opinion that it was the West Indians' duty to unite in resisting the act. It is somewhat

vol. III, p. 118, states that Massachusetts sent the invitation "to every Assembly as far as South Carolina". There is no mention of any such communication in the Journals of the Assembly of Jamaica.

[1] *Maryland Gazette*, Jan. 30, 1766.

[2] *Ibid.*, Apr. 17, 1766.

[3] E. g. *ibid.*, Dec. 10, 1765; Jan. 30, 1766.

[4] *Boston Evening Post*, Feb. 10, 1766; *Boston Gazette*, May 12, 1766; *Maryland Gazette*, March 13, 1766.

[5] *Ibid.*, Apr. 17, 1766; *Boston Gazette*, Jan. 13, 1766.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

difficult to understand why Barbados was singled out for special censure since it was not the only island to yield obedience to the detested act.[1] In Jamaica and Antigua,[2] the stamps were accepted without opposition, and the letter of the Barbados Committee of Correspondence to its agent in London, the publication of which caused a small pamphlet war, did not reach North America until after "the base servile Barbadians" had been generally held up to obloquy in the continental press. Almost immediately it was suggested that Barbados should be deprived of all supplies from the continent. The means to punish the island, it was said, "are now assuredly in the power of these colonies . . . and indeed the very nature of their crime entails this punishment as no individual can be secure in his property that sends thither a ship with unstamped clearances."[3] Shortly afterwards letters from Barbados began to appear bewailing the evils which the act had brought on the colony. The planters were said to be "much alarmed at the vengeance declared against them for readily admitting the Stamp Law."[4] It was even hinted "that if some of the leading men would show an example they would soon put an end" to it. The *Boston Gazette*[5] in printing this and similar letters remarked, "In short they seem in despair about the affair, everyone blaming the other for his folly and simplicity in accepting of the horrid Act and thereby becoming slaves, . . . And yet none of them have courage enough to set it aside."

A letter sent by the Committee of Correspondence to its agent in London intensified the feeling against Barbados.[6] In order-

[1] The Assembly of Barbados protested against the act in an Address to the Governor. Minutes of Council, Jan. 2, 1766.

[2] It is true that they were sometimes reported to be overawed "by the redcoat executives of the civil government", but *cf. Maryland Gazette,* Feb. 20, 1766.

[3] *Maryland Gazette,* Jan. 30, 1766; *cf. ibid.,* March 27; *Pennsylvania Gazette,* Jan. 23, 1766.

[4] *Ibid.,* Mar. 13, 1766. Governor Pinfold told Secretary Conway that "the North Americans have in their letters spared neither arguments nor threats to persuade us to follow their example." Pinfold Letterbook, 1764-66, p. 83.

[5] Mar. 24, 1766.

[6] The letter was published in the *Barbados Mercury,* April 19, 1766, and extracts from it appeared in the *Pennsylvania Gazette,* May 1, 1766.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing him to work with the other agents for the repeal of the Stamp Act, the Committee used arguments familiar to colonial ears; the tax was a heavy burden on industry, it would hamper the administration of justice. But they added that to tax Barbados to pay for the defense of the northern colonies was "just as reasonable and just as merciful too, as it would be to impose a heavy mulct on the inhabitants of this place by way of punishment for the present rebellious[1] opposition given to authority of our fellow-subjects on the northern continent." And though they ventured to doubt the validity of Parliament's claim to tax them, they left it to their agent to decide how much stress should be laid on this point; "for as we mean to obtain a redress of our grievances by a dutiful representation only of our case, so would we have anything avoided in the style and substance of that representation, as might give offence to those from whom only our redress can come. . . ."[2]

John Dickinson immediately rushed to defend his countrymen against the unjust charge of the Committee. In his pamphlet, *An Address to the Committee of Correspondence in Barbadoes Occasioned by a late letter from them to their Agent in London*,[3] he scathingly attacked the cowardice and mean spirit of the islanders.

> Was not your surrender of "the most valuable of all rights and liberties" sufficiently completed by your declaration, that you "could not positively say you were entitled to them", without reproaching those who have the misfortune of differing so widely from you in these sentiments, that they had rather die than make such a declaration?

He swept aside the Barbadians' hesitating reference to the English constitution and their "charter", maintaining that the rights claimed by the colonists were based on natural law.

[1] The Barbadians denied that they had used the word "rebellious"; they maintained that it was an interpolation made by the Americans. *Essay toward the Vindication of the Committee of Correspondence in Barbadoes* . . . . (Barbados, 1766), p. 4; *A Letter to the North American, on Occasion of his Address to the Committee of Correspondence in Barbadoes* (Barbados, 1766), p. 4.

[2] Dickinson, *op. cit.*, vol. I, pp. 100-105.

[3] Philadelphia, 1766. Also in Dickinson, *op. cit.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"They were created in us by the decrees of Providence which established the laws of our nature." The Barbadians claimed some merit for their obedience but, said Dickinson scornfully, "You are . . . only loyal and obedient as you call yourselves because you apprehend you cannot be otherwise."[1]

Unjust though the charge was as the only explanation of the Barbadians' conduct, there was enough truth in it to infuriate them. Their defense was published in two pamphlets, the *Essay toward the Vindication of the Committee of Correspondence in Barbadoes from the Aspersions and calumnies thrown upon them in an anonymous piece printed in Philadelphia, under the title of an address to them, occasioned by their letter to their Agent in London,*[2] and *A Letter to the North American, on the occasion of his Address to the Committee of Correspondence in Barbadoes.*[3]

It was unjust, the authors insisted, to accuse the Barbadians of cowardice, for "to fear where fear is, is neither unmanly nor slavish."[4] Successful resistance, by force of arms if necessary—both hinted that Dickinson's appeal to natural rights could lead to nothing but war and bloodshed[5]—might be possible in North America, but it was out of the question in Barbados, which could be starved into submission by a few frigates stationed off its coasts. "To resist an evil, with the prospect, however small of overcoming it, I own is rational and manly; but to resist an evil, with not only the hazard, but the certainty of bringing down more and greater evils on our heads, is both absurd and frantick. . . ."[6]

But the Barbadians had obeyed the Stamp Act, however reluctantly, for other reasons than the impossibility of success-

[1] Dickinson, *op. cit.*, vol. I, pp. 110, 117. Printed in full in the *South Carolina Gazette,* Aug. 4, 1766.

[2] In a letter to a friend by a Barbadian, Barbados, 1766.

[3] There was a third pamphlet published in Barbados at this time, *Candid Observations on two pamphlets lately published, viz. An Address to the Committee of Correspondence in Barbadoes by an American. A Letter to the North American, 1766.* I have not been able to see this.

[4] *Essay . . .*, p. 20.

[5] *Ibid.*, p. 13; *A Letter . . .*, p. 27.

[6] *A Letter . . .*, p. 11.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

fully opposing it. "The Stamp Act, detestable as it was, yet came to us in the venerable garb of law",[1] and "a British Act of Parliament is binding on every British subject till it is rescinded by the same."[2] Such at least, said the author of the *Letter to the North American,* was the opinion of Mr. Otis. Had he not written, "The power of Parliament is uncontrolable but by themselves and we must obey . . . for forcibly resisting the Parliament and the King's laws is treason?"[3] Mr. Otis. the writer continued—

> has declared, "there would be an end of all government if one or a number of subjects, or subordinate provinces, should take upon themselves so far to judge of the justice of an Act of Parliament as to refuse obedience to it;" whilst you, Sir, afford whole pages to show that there would be an end to all virtue, all truth, all freedom, all courage, if they did not *refuse to act* obediently to a law which in their own opinion was destructive to them.[4]

And why was "An American" (Dickinson) so indignant at the committee's appeal to the island charter? "If our Committee were mistaken when they mentioned charters, it is a mistake in which they have the honour to be involved by the Americans, for they led the way by appealing to their charters."[5] "But your grand quarrel with the Committee, I perceive, is plainly this, that they thought proper to have recourse to any other claim of right than what was to be found by them in their researches into the *Laws of Nature.*"[6]

For some months after the Stamp Act went into effect, northern merchants were very doubtful as to how their ships, with unstamped clearances, would be received in the islands. But as soon as it was clear that West Indian officials would accept

[1] *Essay . . .*, p. 14.

[2] *Ibid.*, p. 17.

[3] *A Letter . . .*, p. 21, quoting *The Rights of the British Colonies asserted and proved.*

[4] *Ibid.*, p. 30.

[5] *Essay . . .*, p. 10.

[6] *A Letter . . .*, p. 27.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

declarations that no stamps were to be had, trade went on in its accustomed way.[1]

When the news of the repeal arrived, some North Americans thought the West Indians ought to be grateful to them for this triumph. Writing to his brother Walter in Antigua to announce "the joyful news of the oppressive illegal Stamp Acts total repeal, which I doubt not your island will heartily rejoice at, notwithstanding their mean submission", William Barrell added: "Let them as I hope they ever will, gratefully acknowledge their deliverance from slavery as proceeding from the noble opposition of the glorious sons of America."[2] It was remarked in the press that the glorious news was received without enthusiasm in Barbados, whereas in Jamaica it was celebrated in a manner worthy of North America itself.[3]

In the agitation begun in 1768, against the Townshend duties, which led to the non-importation agreement of the following year, the West Indies were not, apparently, considered as possible active partners. But they were not regarded as the allies of the English ministry. There was no attempt to bring pressure to bear on them by non-exportation as had been proposed in 1765. Throughout 1769, trade with the islands continued on its accustomed way.[4]

Early in 1774, the idea of forcing the West Indies to exert their power in the House of Commons on the colonial side was revived. One of the resolutions passed at a meeting at Baltimore proposed a cessation of exports to the West Indies and Great Britain after October 1 following, and of imports after December 1.[5] People were talking of a non-exportation agreement in Pennsylvania. Some argued against it, saying

[1] *Maryland Gazette,* Dec. 10, 1765, Jan. 30; *Pennsylvania Gazette,* Jan. 23; *Boston Gazette,* Mar. 24, 1766; Van Cortlandt Letterbook: to Alex. Stevenson, Feb. 10, 1766; Clifford Corr., IV, pp. 209, 210; Pinfold Letterbook, 1764-66, p. 87.

[2] Stephen Collins Papers, V, May 17, 1766.

[3] *Boston Gazette,* June 16; *Maryland Gazette,* July 3; *South Carolina Gazette,* July 21, 1766.

[4] *Cf.* Custom House entries and clearances, *New York Gazette, Boston Gazette,* etc.

[5] *New Hampshire Gazette,* June 24, 1774.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that to cease exports immediately would place the other colonies in the same position as Boston. To this, men like Edward Shippen retorted that they were already as badly off as Boston. "Let us take physic when it best suits our convenience and not wait the wicked ministerial physician's time, when it will be our death." To delay would allow the islands to be well stocked with food and lumber and defeat the object of the scheme. "If we should send no provisions nor staves nor hoops to the West Indies now, the people there would not only be half-starved (I am not for starving them entirely) but could not be making casks for the produce of their plantations", and as soon as those interested at home heard that there would be no sugar crop, they would force Lord North to come to terms.[1]

The same view was expressed in the debates on the subject in the Continental Congress; but, finally, by the Association of October 20, 1774, it was agreed that non-exportation should come into force nine months after non-importation.[2] Non-importation applied to the West Indies as well as to England, but from the islands' point of view, it was not so serious as the threatened stoppage of all foods and lumber from the mainland.

The Congress had said that "the earnest desire we have not to injure our fellow-subjects in Great Britain, Ireland and the West Indies, induces us to suspend the non-exportation until the tenth day of September, 1775." To the West Indies, this plainly meant, "See what you can do in the time we have given you."

Opinion was as deeply divided in the West Indies as in England, over the questions at issue.[3] There was a strong minority, chiefly merchants, in sympathy with the North Americans.[4] In Barbados, collections were made for the suf-

[1] Balch, *Letters and Papers Relating to Pennsylvania* (Philadelphia, 1855), pp. 238-39.

[2] *Journals of the Continental Congress* (Washington, 1904), vol. I, p. 77; E. C. Burnett (ed.), *Letters of Members of the Continental Congress* (Washington, 1921-28), vol. I, pp. 49-50, 63-64.

[3] E. g. Pemberton Papers, XXVI, pp. 118-19, XXVIII, pp. 87, 182; Stephen Collins Papers, XIX, Oct. 25, 1775.

[4] Ragatz, *op. cit.*, p. 143.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ferers in Boston;[1] an Address to the King was introduced into the Assembly but after fierce debates, it was thrown out.[2] In Jamaica, the friends of the northern colonists were more successful. In December, 1774, the Assembly, "justly alarmed" as it said "at the approaching horrors of an unnatural contest between Great Britain and her colonies", sent a petition to England.[3] On February 2, 1775, the West Indian planters and merchants in London presented another petition to the House of Commons. In this and in the long argument delivered at the bar of the House five weeks later by their representative, Mr. Glover, they laid stress entirely on the practical side of the question. The sugar islands must inevitably be ruined by an interruption of the supplies from the American continent, and in their ruin, England, Scotland and Ireland, merchant and landowner would be involved.[4]

The Address of the Assembly of Jamaica made quite a stir in the continental colonies. It was printed in full in the newspapers,[5] and published as a pamphlet in Philadelphia.[6] In May, 1775, it was rumored in Philadelphia that the Continental Congress might open the ports to the Jamaicans "who have so nobly stepped forth".[7] The Connecticut House of Representatives passed a resolution thanking the Assembly of Jamaica for "their kind and seasonable mediation", and ordered their speaker to send to Jamaica a copy of this resolution, together with a copy of their resolution of May, 1773, appointing a committee of correspondence; and to invite the Jamaica Assembly "to come into that or a similar method of

[1] *Connecticut Courant,* Mar. 27, Apr. 3, 1775; Pemberton Papers, XXVIII, p. 69.

[2] *The West India Merchant* (a series of papers originally printed under that signature in the *London Evening Post,* London, 1778), pp. 117-20. *Cf. Connecticut Courant,* Mar. 6, 1775.

[3] Force, *American Archives,* vol. I, 1072.

[4] *The Substance of the Evidence on the Petition presented by the West India Planters and Merchants* . . . . (London, 1775).

[5] E. g. *Connecticut Courant,* Mar. 6, 1775. The paper added a short account of the island to show the importance of this new ally.

[6] By W. & T. Bradford, 1775.

[7] T. Wharton Letterbook, 1773-84, Pa. Hist. Soc., p. 161.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

mutually communicating such intelligence, as may be of public importance and more immediately affecting the inhabitants of the British colonies and islands, in America."[1]

The Continental Congress also thought that some acknowledgment of this support was advisable, and in July, 1775, it issued an Address to the Assembly of Jamaica. From necessity and "necessity alone" had the non-exportation and non-importation agreement been extended to include the West Indies. The Congress thanked the Assembly for its sympathetic efforts. The Assembly had rightly realized that, in the words of James Otis, "the cause of America is . . . the cause of the whole British Empire."[2] At the same time, the Congress made it clear that it did not and could not expect active help from the island.[3]

During the autumn of 1775, members of Congress continued to talk of the hope for some results from the non-exportation agreement. "We shall by the spring know the full effect of our non-exportation agreement on the West Indies", wrote Samuel Adams to James Warren on November 4. John Adams, a fortnight earlier, told the same correspondent that it was reported that the West Indies, Barbados, particularly, were "terrified out of their wits".[4]

The West Indies were not included in the Congressional resolution of March 23, 1776, which declared lawful prize vessels and cargoes "belonging to any inhabitant . . . of Great Britain" or vessels "employed in carrying supplies to the ministerial armies."[5] By July, it had been found too difficult—probably unprofitable—to continue this distinction. On the seventeenth, a committee was appointed to prepare a reso-

[1] *Connecticut Courant*, Apr. 3, 1775. These resolutions were laid before the Assembly of Jamaica on Nov. 1. The following day a motion to refuse to receive "any letters from any of the Assemblies or congresses in North America during the present disturbances in that country" was defeated by moving the previous question. *Journal of Assembly of Jamaica*, vol. VI, pp. 574, 576.

[2] *Boston Gazette*, Apr. 17, 1769. *Cf.* C. Gadsden: "By saving our own liberties, we shall save those of the West Indies" (Sept. 1774 in Burnett, *op. cit.*, vol. I, p. 49.

[3] *Journals of Continental Congress*, vol. II, p. 206.

[4] Burnett, *op. cit.*, vol. III, pp. 237, 248.

[5] *Journals of Continental Congress*, vol. IV, pp. 230-32.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lution for "subjecting to confiscation the property of the subjects of Great Britain, and particularly the inhabitants of the British West Indies, taken on the high seas." On the twenty-fourth, it was agreed to extend the resolution of March 23 and April 3 to all subjects of Great Britain.[1]

Perhaps it might be said that in 1774-75, there was a greater measure of sympathy between West Indians and Americans than ever before. But, while one does not wish to minimize unduly the sincerity of West Indian Whiggism, it is impossible not to feel that the expression of that Whiggism at this juncture was, quite naturally, as much the result of prospective privation as of principle. The importance of the economic factor in determining the attitude of one group or class to another is well illustrated in the relations of North Americans and West Indians during the eighteenth century. On constitutional questions, the colonists, islanders and continentals, spoke much the same language; they bullied their governors and defied the Board of Trade. Yet there was little sympathy between them. For the West Indians thought their interests were advanced by a restriction of the continental trade to the British islands, and the northern colonies wished for freedom to trade to the best market in the Caribbean, wheresoever it might be. The West Indians agreed with the North Americans when their economic interest demanded agreement, as in the question of Canada versus Guadeloupe, or in opposition to Lord North's measures. And after the war, their economic interest led them to make the revolutionary suggestion that the Navigation Act "must adapt itself to every material alteration of circumstance or its provisions will be no longer wise or salutary."[2]

AGNES M. WHITSON

NEW HAVEN, CONN.

[1] *Ibid.*, vol. V, pp. 572, 591, 606.

[2] *Considerations on the Present State of the Intercourse between His Majesty's Sugar Colonies and the Dominions of the United States of America* (London, 1784), p. 36.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

THE USE OF THE LABOR INJUNCTION IN THE NEW YORK NEEDLE TRADES II[1]

The Men's Clothing Industry

WITH the exception of one case—*International Tailoring Co. v. Hillman*—discussed in detail below, the small group of cases in the men's clothing industry of New York City can be disposed of briefly. Titles to twenty-four cases were found, of which only fourteen left records sufficient for analysis.[2] The titles of the latter follow:

1894 Sinscheimer v. United Garment Workers, 26 N. Y. Sup. 152.
1913 N. Y. Clothing Trades Ass'n. v. United Garment Workers.
Rosenthal Mfg. Co. v. United Garment Workers.

[1] The first part of this article was published in the POLITICAL SCIENCE QUARTERLY for December, 1929, pp. 548-68.

[2] The cases for which little or no information has been found are as follows:

1901 Cohen v. United Garment Workers (N. Y. Co.), 72 N. Y. Sup. 341.
1920 Welinsky v. Hillman (N. Y. Co.), 185 N. Y. Sup. 257.
1921 Rosenthal Bros. v. Hillman (N. Y. Co.).
Berger, Raphael and Weil v. Hillman (N. Y. Co.).
Fruhauf Bros. v. Hillman (N. Y. Co.).
Heidelberg Wolf and Co. v. Hillman (N. Y. Co.).
S. Levy v. Hillman (County not known)
Clemens, The Tailor v. Hillman (N. Y. Co.).
Cohen and Lang, Inc. v. Hillman (N. Y. Co.).
1925 M. Kullok v. Hillman (N. Y. Co.).

Since this article was put in type we have had notice of the following additional cases, the papers in which, however, we have not yet examined:

1918 Glass v. Hillman (Kings Co.).
Monroe Clothes Shop v. Hillman (N. Y. Co.).
1919 Bob and Bashkin v. Hillman (N. Y. Co.).
1920 Hilton (Joseph) v. Hillman (N. Y. Co.).
1923 Silberstein and Sons v. Hillman (N. Y. Co.).
1924 Tischler and Benkel v. Hillman (N. Y. Co.).
1925 Amalgamated Clothing Workers v. International Tailoring Co. (N. Y. Co.).
1928 Albert (Max), as Pres., Sheepskin Leather Coat Workers Loc. Union v. Amer. Sheepskin Coat Co. (N. Y. Co.).
Hillman v. Rosenzweig, T. and Son (N. Y. Co.).
1929 Hillman v. Sunstar Mfg. Co. (N. Y. Co.).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

1919 Phillips–Jones Corporation v. "Doe".
Rogers–Peet Co. v. Hillman.
1921 Coleman v. Hillman.
Berkwits v. Hillman.
Peck v. Hillman.
Marks–Arnheim v. Hillman, 198 A. D. 88, 189 N. Y. Sup. 369.
J. Friedman Co. v. Amalgamated Clothing Workers, 188 N. Y. Sup. 879.
J. Skolny and Co. v. Hillman, 187 N. Y. Sup. 706.
Schwartz and Jaffee v. Hillman (Kings County), 189 N. Y. Sup. 21.
1925 International Tailoring Co. v. Hillman.
1926 S. Finkelstein Co. v. Hillman.

All of these cases arose in New York County (Manhattan) except *Schwartz and Jaffee v. Hillman* and *Peck v. Hillman,* which came up in Kings County (Brooklyn). The depression year, 1921, appears to have been the most crowded in this industry's New York injunction record, as it was one of the two most crowded years in the women's clothing industry. As in the garment-trade cases, all of the actions were begun in the State Supreme Court. The first three cases antedate the birth of the Amalgamated, the defendant organization being the United Garment Workers, a split in which union resulted in the organization of the Amalgamated in 1914. The other eleven cases are actions involving the Amalgamated. The first of the two cases arising in 1913 involves an association of employers; all of the others are actions by individual employers. The International Tailoring Company case will be discussed presently in some detail.

Injunctions were issued in twelve of the fourteen cases, the only applications failing to get some form of restraint being those in the cases of *Phillips-Jones Corporation v. "Doe",* apparently the first New York application against the Amalgamated, and *Coleman v. Hillman.* In six of the twelve cases *ex parte* orders were issued: two of them were the 1913 cases against the United Garment Workers, which were dismissed before determinations could be made at hearings; three of the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

four *ex parte* cases which came to a hearing (the Marks Arnheim, Berkwits and Friedman cases) had the orders vacated, but in the Arnheim case the vacated *ex parte* order was reinstated after appeal; the remaining *ex parte* case had the order continued after hearing, but in a somewhat modified form. In the other six cases there was no *ex parte* order but a temporary injunction was issued after a hearing.

The time covered by the litigation, from summons and complaint to decision on temporary injunction, was as follows, for the ten cases in which dates could be ascertained:

Sinscheimer v. United Garment Workers	219 days
Phillips-Jones Corp. v. "Doe"	19 days
Marks Arnheim v. Hillman	45 days
Friedman v. Amalgamated	33 days
Schwartz and Jaffee v. Hillman	33 days
Skolny v. Hillman	21 days
International Tailoring Co. v. Hillman	23 days
Finkelstein v. Hillman	44 days
Berkwits v. Hillman	19 days
Peck v. Hillman	21 days

For nine of the twelve injunctions we have been able to calculate the length of time the orders were in force.[1] The temporary injunctions in the Schwartz and Jaffee and Skolny cases remained in effect for 163 and 183 days, respectively, until cut off by orders of discontinuance. The two *ex parte* orders against the United Garment Workers continued in effect 72 days in the Clothing Trades Association case and 84 days in the Rosenthal case, at the end of which periods the cases were dismissed, without a hearing having been had. The three remaining actions were *ex parte* cases which came to hearing. In the Friedman and Berkwits cases orders were reversed on hearing after having been in effect 33 and 19 days respectively. In the Rogers Peet case, after the stay had been

[1] The three cases where the time is unknown are the International Tailoring Co., Peck and Finkelstein cases. In the first, after 23 days had passed between the original application and the hearing, a temporary injunction was issued, and, so far as the record shows, remained in force indefinitely, without more ado in the courts. See below for detailed story of this case. The situation in the Peck and Finkelstein cases was similar, except that the elapsed time before hearing was 21 and 44 days respectively.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

effective 106 days, a hearing was had and a decision handed down vacating the *ex parte* order in so far as it applied to the Amalgamated Clothing Workers as a national organization, but continuing it as against its New York Local No. 4; in this modified form the Rogers Peet injunction remained in (nominal) effect 959 days longer, being terminated by an order of discontinuance. The total life of this injunction, therefore, was 1,065 days. The last of the three cases, that of *Marks Arnheim v. Hillman,* ran a somewhat erratic course. It originated on April 1, 1921, in the form of an *ex parte* order enjoining defendants from (1) doing any acts injurious to plaintiff's business, (2) congregating or standing in the street near his place of business, and (3) hampering or hindering in any way the free dispatch of plaintiff's business. The defendants answered on April 21. A hearing was had on the following day and on May 4 a decision was handed down denying the injunction. The case was noticed for appeal on May 5 and argued on appeal on June 10. On July 25, 1921, the appellate decision was handed down, reversing the earlier decision and reinstating the injunction in a form somewhat more drastic than it took in the original *ex parte* order. The appellate order restrained picketing in any manner whatsoever. The case came before a referee on September 22, 1923, and a permanent injunction was granted on October 17, 1923. Up to this last date some form of injunction had been in force in this case during an aggregate period of 847 days. It should be noted, finally, that the Marks Arnheim case is the only one of our men's clothing industry cases in which the restraint ever assumed the form of a permanent injunction. In the remaining case of *Sinscheimer v. United Garment Workers* the order granting a temporary injunction (dated Nov. 17, 1893) was reversed on appeal to general term after having been in force 147 days.

The International Tailoring Co. v. Hillman[1]

The detailed discussion of this important case is presented

[1] Unreported. The orders and decisions in this case and the various papers marking the proceedings that lead up to them are on file in the New York County Clerk's office. File no. 29908 (1925).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

both as a matter of intrinsic interest and for the light it throws on the injunctive process. The foregoing analysis of the two groups of needle-trade injunction cases may take on additional meaning and reality in the light of the recital of the story of an isolated case, and the implications for employer, employee and the "rank outsider" of this use of injunctions may assume a more definite shape.

The case under discussion is typical. The labor dispute leading up to the legal battle followed normal lines. The time consumed in the disposition of the case by the courts was close to the average time, and the instruments indicate very well what is to be found in the majority of cases. The case will be found to be interesting also since it so clearly reveals the unsettled state of our labor law.

The International Tailoring Company, with offices in both New York and Chicago, controls several smaller companies, one of which is the J. L. Taylor Company. The firm does a yearly business of about $2,000,000 and employs approximately 1,300 workers. The Amalgamated Clothing Workers of America is a labor union having about 65,000 members in 141 local unions distributed throughout the United States and Canada.

When an agreement was signed between the International Tailoring Company and the Amalgamated Clothing Workers of America on November 6, 1925, a labor dispute was brought to an end which had been going on for nineteen weeks; it had cost one life and nearly $2,000,000, and was probably the most bitterly fought battle that has ever taken place in the clothing industry between a labor union and an individual employer. It was not the typical labor dispute over wages, hours and conditions of work, but was, instead, a fight on the part of the union to protect and safeguard a principle which the Amalgamated had been working to establish for a great number of years. It was a battle to keep intact the impartial machinery which had been set up for the peaceful settlement of disputes—an experiment which was first introduced in the plant of Hart, Schaffner and Marx of Chicago in 1910, and which proved so successful that it rapidly spread to the other larger manu-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

facturing establishments in the industry. The substitution of this impartial machinery for the strike in the settlement of disputes had helped greatly to stabilize production in a highly seasonal and competitive industry and had resulted in much better conditions for the workers and larger profits for the employers.

In this instance the agreements setting up the machinery had been first signed in 1920, and had been biennially renewed without much discussion.[1] However, in May, 1925, when the time for negotiation for the renewal of the agreements arrived, there was much discussion as to terms. After long negotiations the manufacturers in the large centers renewed the agreements on the pledge that the Amalgamated would go into and organize the manufacturing centers which were then unorganized and which offered most competition. This unionization program was started immediately.

At the same time the International Tailoring Company decided not to renew its agreement with the union, but instead to operate on an open-shop basis.[2] This decision was interpreted as a threat to the impartial machinery which had proved so successful in the industry. There had been a distinct depression in the clothing industry and discontent was more or less prevalent. For this reason it was feared by the union that if the International carried out its intentions, others might follow suit and cause a return to the old régime in which strikes, long hours and poor conditions of work were the rule. The union faced difficulties resulting from a depleted bank account and internal strife of a rather serious nature. But in face of these difficulties it decided, nevertheless, to strike.

[1] It should be noted, however, that the agreement had actually been signed by the International Tailoring Co. and the Amalgamated of Chicago only, the relationship between the International and the Amalgamated of New York resting on what the president of the plaintiff company termed a "gentlemen's agreement".

[2] The company did, however, make an agreement with the United Garment Workers which caused no little trouble. For this phase see *Report of the General Executive Board and Proceedings of the Seventh Biennial Convention of the Amalgamated Clothing Workers of America, May 10-15, 1926, Montreal, Canada,* (Cover title: *Documentary History of the Amalgamated Clothing Workers of America,* 1924-1926), pp. 80-83.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The strike was begun in Chicago on June 26, 1925, when the employees of the International Tailoring Company and the J. L. Taylor Company were called out. Eight hundred workers responded to the call. Three days later, on June 29, in order "to uphold the standards of the union and to prevent the use of New York factories for strike breaking in Chicago", a strike call was issued to the employees of the same two firms in New York. To this call seven hundred workers responded. Picketing was started immediately but there was no violence of a serious nature until July 7, when "a private detective was stabbed in the abdomen while escorting six strike breakers to the factory of the International."[1]

Soon after the beginning of the strike, on July 17, the International applied to the courts in both New York and Chicago for injunctive relief. In Chicago the injunction was granted on hearing but peaceful picketing was allowed. In New York an order was secured from Justice McGoldrick, returnable in five days and restraining until the hearing any violence in connection with the picketing. The plaintiff's attorneys presented ninety-five affidavits indicating that the defendants were guilty of over twenty assaults and that it was impossible for the plaintiff to carry on his business successfully. In the affidavit of J. L. Reiss, president of the plaintiff company, it was stated that the International did an annual business of some $2,000,000 and employed more than 500 workers. He charged the Amalgamated with conducting a boycott and conspiracy which was entered into by the entire union membership. He also alleged that there had never been less than fifty pickets on duty in front of the plaintiff's factory, and in closing he declared the Amalgamated to be "a radical departure in unionism by revolutionary elements among the clothing workers."[2]

In other affidavits it was stated that it was at all times necessary to keep eight special police in front of the plaintiff's factory to watch the pickets and that automobiles were necessary to escort the workers to and from their homes. An-

[1] *New York Times*, July 8, 1925.

[2] *Ibid.*, July 19, 1925.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

other statement of some interest was that "the defendants have been practicing violence with deadly intent against the company's executives, and have assaulted one superintendent and three foremen."

It was stated by the attorneys for the plaintiff that six workers were unable to return to work as a result of serious injury suffered at the hands of the strikers and the union's "strong arm" men. There was one alleged attack on the night watchman to gain entrance to the plaintiff's building in order to destroy property. As to the means used in execution of the violence, it seems that "black jacks, milk bottles and other weapons" were brought into play.

The president of the plaintiff company stated in his affidavit that all the employees were entirely satisfied with the wages, hours and conditions of work but that the men were unable to work because of the union's interference. He also stated that the company "has concluded that to continue dealing with the Amalgamated would result in the destruction of our business, and we have elected to continue our business and our relations with our workers with the express understanding that they are not to join the Amalgamated, or any affiliated body."[1]

The complaint presented by the plaintiff should be noted. The looseness of language employed, though not an unusual thing in complaints, is interesting. Only a part will be quoted:

> . . . that in violation of the plaintiff's contract rights and contrary to the terms of the agreement and without any grievance or dispute among the employees, but inspired by opposition to all forms of law and order and completely and utterly disregarding the plaintiff's rights and the obligations of the plaintiff's employees to the plaintiff, and with the intent and purpose solely of preventing the plaintiff from doing any business and ruining the plaintiffs in their business, and bring disorder into their business and chaos in the community . . . the defendants have been and still are coercing, threatening, assaulting, intimidating, halting and turning aside against their will those who would go to and from the plaintiff's business.
>
> *Wherefore*, the plaintiff demands judgment against the de-

[1] *New York Times*, July 19, 1925.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

fendant that it be adjudged and decreed that the Amalgamated Clothing Workers of America is a common law conspiracy in unreasonable restraint of trade and also a conspiracy against the rights of non-union workers.[1]

On July 21 Max Steuer was retained as attorney by the Amalgamated. The defendant's answer to the complaint and the affidavits in opposition to the motion were presented to the court on July 23. In these papers it was charged that the International had entered into a conspiracy to wreck the union, and that it had broken off relations with the union in the dull season when it would be most advantageous to the company and most harmful to the union. They also charged "that the company had conducted sham negotiations with the union for the renewal of the agreement until its plans and purposes were ripe for consummation."[2]

In answer to the affidavit of the president of the company, one by Israel Mendelson was filed in which it was stated that during the month of June the company had sent out notices to the employees to the effect that the Amalgamated was ruining the business of the company and in order to escape ruin they would have to move. This affidavit also stated that in 1924 the company paid an income tax of $67,237, which indicated a net profit of $500,000. It further stated that in 1920 when the agreement was first signed between the parties, the capital and surplus of the International was only $1,363,385, while in 1925 it had increased to $3,093,920.

In the defendant's answer, a counter-injunction was applied for on the ground that the company was conspiring to wreck the union.[3] In addition the defendant asked for $25,000

[1] This and the following excerpts from the papers in the case have been taken from copies in the office files of Szold, Perkins and Brandwen, defendant's attorneys, 43 Exchange Place, New York. It is interesting to note that four years before, Justice Bijur in his decision in the Friedman case had denied a motion to have the Amalgamated adjudged a conspiracy. This is a rare prayer.

[2] *New York Times*, July 25, 1925.

[3] Amalgamated Clothing Workers v. International Tailoring Co. injunction denied. *New York Times*, July 25, Aug. 13, 1925, cited by Witte, "Labor's Resort to Injunctions" (1930), 39 *Yale Law Journal* 385.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

damages for losses sustained as a result of the activities of the company. That looseness of language is to be found not only in complaints is indicated in the following quotation taken from the defendant's answer:

> . . . for the purpose of preventing the workers of the clothing industry from collective bargaining, for the purpose of compelling the workers to accept less than a living wage and conditions of employment detrimental to their health, for the purpose of restoring unrestrained exploitation by the employer of the employee, for the purpose of restoring the sweat shop conditions which existed in the clothing industry prior to the organization of the Amalgamated Clothing Workers of America, for the purpose of destroying law and order in the clothing industry and substituting anarchy and chaos therefor, the plaintiff corporation . . . with other persons have unlawfully conspired, confederated and combined by intimidation, assault, force, libel, defamation, deceit, false arrest, black list, fraud, perjury and other unlawful means, to injure, disrupt, break up, interfere with and destroy the Amalgamated, . . . to prevent the Amalgamated from functioning as a labor union, from collecting dues, receiving contributions and otherwise acquiring funds, from investing said funds in the purchase of Liberty Bonds and other securities. . . .
>
> In pursuance of said unlawful conspiracy the plaintiff has maliciously locked out and refused to employ all persons members of the Amalgamated although capable and efficient workmen . . . , they have employed strong arm men who have on diverse occasions coerced, threatened, intimidated and assaulted members of the Amalgamated, have caused to be published false and defamatory statements, . . . have instigated violence, . . . have caused false arrest of the defendant members and have attempted to entice the members to desert their membership.

The hearing on the temporary injunction was held on July 24, 1925, with Justice Churchill presiding. The decision followed on August 12. It enjoined—

> the defendants and their and each of their agents, servants, attorneys and confederates and any and all persons working in aid or in conjunction with them from (1) using any violence

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> or making any threats of violence to any employee of the plaintiff or any person seeking such employment, (2) picketing in any manner whatsoever, (3) congregating or standing in the street within ten blocks in any direction of the plaintiff's business, (4) threatening, intimidating, assaulting, halting or turning aside those who would go to and from the plaintiff's business, and (5) endeavoring to get the plaintiff's employees to leave employment or to join the defendant union.

In granting the injunction Justice Churchill, in his opinion, said:

> There have undoubtedly been threats of violence, and I am satisfied that this misconduct is not to be explained on the theory that it is chargeable to strangers to the quarrel moved merely by a sympathetic interest on behalf of the strikers. I have no doubt that it is the work of former employees of the plaintiff aided by other members of the union and in supposed furtherance of the purposes of the organization. I dislike to interfere by injunction in an industrial dispute but *where violence is proved all other considerations must be subordinated to its suppression.*[1] If the union cannot control its members it must, to some extent, suffer the consequences of their misconduct. It can escape the stigma of injunctions against violence by ridding itself of its members guilty of violence.[2]

It is interesting to note that nothing was said in regard to the charge that the conditions described were brought into being by the plaintiff and that "high handed" methods were used to bring them about.

The decision was met with a storm of protest. A great many newspapers and magazines severely criticized the decree.[3] Sidney Hillman, president of the Amalgamated, described it as being "an open invitation to the employers to start sweat shops in this city under the protection of the courts." He made the further comment:

[1] The italics are ours.

[2] The decision is reported in the *New York Times*, August 13, 1925.

[3] See *Nation*, Sept. 9, 1925 and Dec. 2, 1925; and *New Republic*, Sept. 2, 1925 and Dec. 9, 1925.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> Notwithstanding the Court of Appeals of New York has recently reaffirmed the right of peaceful picketing, the position taken by Judge Churchill denies that right. . . . All the progress that has come through years of judicial interpretation and legislative enactment have been swept aside in this opinion by Justice Churchill. Even the rights guaranteed by the Clayton Act enacted by Congress are nullified by this decision.[1]

An examination of the geography of the area surrounding the factory of the International Tailoring Company makes it easy to understand why such a storm of protest broke around Justice Churchill's head. Within the ten-block radius prescribed by the decree was the greater part of the clothing industry of New York. It was a question whether the employees of other firms could go to their places of work without violating the injunction order. Moreover, the business offices and the bank of the Amalgamated were in the forbidden area. On account of this situation it was decided that a test case should be made. Five workers volunteered to picket the plant of J. L. Taylor Company, a subsidiary of the International, which had no injunction against the union but which was located in the same building.[2] These pickets were immediately swept up and arrested on charges of contempt under the injunction obtained by the International. The hearing on the contempt was held before Justice Levy on August 27. The complaints against all five men were dismissed, and here we may see quite distinctly the differences in opinion that may be held by justices of the same court. After hearing the evidence Justice Levy said:

> There is no man in the world probably who has a higher jealousy for the dignity and integrity of the courts than I have, . . . but it strikes me that this is the most far-fetched proceeding that I have ever found coming to my notice. . . . The idea of attempting to bring five men who were working in the same building with a concern that was cut off, completely divorced

[1] *New York Times*, Aug. 13, 1925.

[2] It should be noted that in Chicago the J. L. Taylor Co. was named as co-plaintiff with the International, but due to some chance neglect it was not so named in the New York dispute.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> from that for whom you secured your decree or your order, and seek to hold them criminally for enforcing what they regard their legitimate rights in protesting over conditions and wages or whatever it be that to them prove unsatisfactory and make demonstration in evidence of that protest and seek to jail them, is a high-handed proceeding in my opinion, and certainly not one that I will tolerate or suffer.[1]

From this time on the union was able to conduct mass picketing in front of the J. L. Taylor Company even though it was located in the same building with the International. On one occasion 500 union members congregated in front of the building at quitting time. Others, seeing the crowd, stopped to see what was taking place. Traffic was completely tied up and all police reserves south of Fourteenth Street were called out to disperse the mob. There were, however, no reports of violence.[2]

In the meantime, the International was using all known means of strike breaking. Letters were sent out to the workers urging them to hold on to their jobs in this period of widespread unemployment, but this met with no success. The enthusiasm of the workers was too great. On occasions when great numbers were thrown into jail, the jails "would ring with songs of the Amalgamated". The women, many of whom were arrested more than once, would return to the picket line as soon as they had been released.[3]

During the eighteenth week it was clear that the morale of the workers was in no way weakening—they were ready to carry the fight on to the finish. The International was unquestionably impressed with this fact, for it consented to sign an agreement with the union. The conference out of which the agreement grew was held on November 6 between representatives of the two parties. The workers returned to their places on Monday, November 9, after a struggle of nineteen

[1] The decision is reported in the *New York Times*, August 28, 1925.

[2] *Ibid.*, Sept. 23, 1925.

[3] *Documentary History of the Amalgamated Clothing Workers of America, 1924-1926*, p. 87.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

weeks to the day, protected by an agreement which the International had refused to sign almost six months before.

Three days after the agreement had been signed, the parties issued the following joint statement: "The differences between the International Tailoring Company and the Amalgamated Clothing Workers of America have been amicably adjusted in a conference at the Vanderbilt Hotel. . . . It is to be expected that a satisfactory and peaceful relationship will from now on exist between the union and the firm. . . ."[1]

The attitude of the union membership toward the signing of the agreement is indicated in the following official statement:

> Not in years was a strike settlement greeted with the enthusiasm that met the settlement of the International strike. Even before the agreement was signed, when it became known to the membership in New York that negotiations were being concluded, many strikers came to the National Office with flowers. It was celebrated with jubilation in Webster Hall in New York. . . .[2]

Certain features of this case are sufficiently significant to warrant comment. In the first place it would seem that chance has quite as important a rôle to play in the controversies in our courts as it has in other phases of life. The neglect on the part of the attorneys of the International to include the J. L. Taylor Company as one of the plaintiffs made an opening for the test case. The victory was certainly due in a measure to this chance omission.

Another salient feature of the case was the injunction issued by Justice Churchill. The acts enjoined by this order were not in themselves unusual, but the geography of the ten-block area was such as to give the order a very sweeping and drastic effect. In this particular case the abuse of the injunction seems clearly indicated. Probably the most prominent and interesting feature of the case is the indication we get from it of a lack of stability in the content of our labor law. This was evidenced with some force in the opinion of Justice Levy in

[1] *Daily News Record*, November 9, 1925.

[2] *Documentary History of the Amalgamated . . .*, p. 85.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

which he rebuked Justice Churchill for the issuance of the injunction restraining the congregation of pickets within ten blocks of the plaintiff's factory.[1]

Violation and Contempt[2]

The violation of an injunction is a contempt of court. Such violations in labor cases belong as a rule to the class of contempts called indirect because they are not committed in the immediate presence of the court.[3] The records in the fourteen clothing-trade and thirty-four garment-trade cases indicate that, as seems true of other industries also, the number of contempt proceedings started is very small compared with the whole number of labor injunction proceedings. The forty-eight case-records show only three motions to punish for contempt, two of which were denied, presumably for lack of evidence that there had been violations. The two dismissed cases were *Rosenthal Manufacturing Co. v. United Garment Workers* (New York County, 1913) and *Schwartz and Jaffee, Inc. v. Hillman* (Kings County, 1921), both in the men's clothing trade. In the latter case, at least, there was a hear-

[1] *Chronological Summary of the Case:*

First plaintiff affidavits drawn	July 1, 1925
Summons and complaint	July 17, 1925
Order to show cause with stay.....(McGoldrick)..	July 18, 1925
Answer by defendant	July 23, 1925
Hearing on temporary	July 24, 1925
Opinion by Churchill granting injunction	Aug. 12, 1925
Injunction order	Aug. 17, 1925
Picketing of J. L. Taylor Company	Aug. 17, 1925
Notice of appeal by defendant	Aug. 18, 1925
Hearing on contempt	Aug. 27, 1925
Decision (not guilty)	Aug. 27, 1925
Mass picketing begun	Aug. 27, 1925
Conference between union and company	Nov. 6, 1925
Return of workers to jobs	Nov. 9, 1925

[2] From this point forward no effort will be made to deal separately with the men's and women's branches of the clothing industry.

[3] Incidentally, these indirect contempts may be proceeded against as either civil or criminal contempts; in either case the court whose order has been contemned tries the contemnors; or they may be proceeded against as crimes. Such is the case when a person is brought before Special Sessions for violation of Subdivision 4 of Section 600 of the Penal Law. This third classification, though rarely made, is none the less real.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing following issuance of an order to the defendants to show cause why they should not be punished for contempt. The single case in which the court found that the evidence proved the contempt was *Lipschitz v. Amoruso* (Westchester County, 1921). Here the commitment papers (the only contempt documents found in the record) indicate that the violation was punished but the severity of the punishment is not revealed. The conviction in the Amoruso case was for contempt of a temporary injunction that had been issued in continuance of an *ex parte* order. Within a month after commitment the case went to trial (June 16, 1926) and, in due (deliberate) course a decision was handed down by Justice Morschauser denying the injunction and dismissing the complaint. The chronology of the case is worth setting down: Summons and complaint were issued February 29, 1924. On the same day was issued an order to show cause, with stay (i.e., *ex parte* order). The stay enjoined (1) combining, conspiring or agreeing to obstruct plaintiff's business in any way, (2) interfering with plaintiff's business by annoying, harassing, ridiculing, assaulting, intimidating, bribing, following or interfering with plaintiff or his employees or prospective employees, or families or friends of his employees, for the purpose of inducing said employees to accept or not to accept employment, (3) standing at or near plaintiff's property, (4) doing any acts to injure the good will of the plaintiff, and (5) picketing. The defendant's answer and the hearing followed in due course but no dates appear. On April 28, 1924, after defendants had been subjected, evidently, for almost two months to restraint without a hearing, Justice Taylor handed down a decision continuing the *ex parte* order in the form in which it first issued. There is nothing in the record to show when the case was noticed for trial but the trial was not held until more than two years later, June 16, 1926. Moreover, eighteen and a half months elapsed after the trial before Justice Morschauser handed down his decision denying the injunction. The final item in the record is a notice of appeal from the trial decision, said notice being dated March 23, 1928. The case evidently did not go to appeal. Here we have a final decision on the merits declar-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing, on its face, that both the *ex parte* order and the succeeding temporary injunction were improvidently issued and defendants unjustly restrained—and this decision comes only after twenty-one months of wrongful restraint and after one or more defendants have been punished for contempt.

It would, of course, be quite wrong to infer, from the fact that there were in this group of cases only three applications to punish for contempt, that there were violations in no more than three of the forty-eight cases.[1] It would seem that applications were made only in so small a number of cases because in the others proof of alleged violations was thought difficult. There must have been violations in numerous other cases, besides violence committed by persons not parties to the action and so not subject to the decree. It is, naturally, no easy matter to prove that a given act was committed by a defendant or an agent or representative of defendant.

The Contents of the Decrees[2]

It has been, so far, a story of process and procedure and of

[1] In addition, in an indeterminate number of cases there were ancillary criminal actions, brought usually in the magistrates' courts, and carrying charges of assault, disorderly conduct, causing crowds to collect, or the like.

[2] As fairly typical of the injunction orders issued in the clothing industries, Justice Ingraham's permanent injunction order in the case of the *Cairo Dress Co. v. Sigman* (unreported) is here reproduced:

Fol. 1. At a Special Term, Part I, of the Supreme Court, held in and for the County of New York, in the Borough of Manhattan, City and State of New York, on the 4th day of October, 1926.

PRESENT:

HON. PHOENIX INGRAHAM

JUSTICE.

CAIRO DRESS CO. INC.

Plaintiff

—against—

2. MORRIS SIGMAN, as President of International Ladies Garment Workers Union, "JOHN" "DOE", as President of Joint Board, Cloak, Skirt, Dress and Reefer Makers Union, and "JOHN" "ROE", as President of Dressmakers Union of Greater New York, Local No. 22, the names "JOHN" "DOE" and "JOHN" "ROE", being fictitious, they being unknown to the plaintiff.

Defendants.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

judicial disposition made after process. What is the sub-

The plaintiff having moved on an order to show cause signed by Hon. John L. Walsh on the 2nd day of September, 1926, for an injunction against the defendants above-named and after reading and filing the order to show cause, dated the 2nd day of Sep-
3. tember, 1926 signed by Hon. John L. Walsh, and the affidavits of NATHAN EIFERMAN, PETER GOODHEART, HILDA STEEMAN, HELEN KLEIN, HELEN KATZ, JACK GOODHEART and OSCAR HOCHBERG, all duly verified the 31st day of August, 1926, and the summons and complaint herein, in support of said motion, and the affidavits of MORRIS SIGMAN, JOSEPH FISH, MILLIE TANNENBAUM, ROSE WYROTH, THERESA PARTUCCI and JENNIE BITALI, all duly verified the 14th day of September, 1926, in opposition thereto, and after hearing FELDMAN, STREICKER & FELD-
4. MAN, MATTHEW FELDMAN, of Counsel, attorneys for the plaintiff, in support of said motion, and MORRIS ROTHENBERG, attorney for the defendants, in opposition thereto, and after due deliberation having been had thereon, and upon filing the opinion of the Court, it is

ON MOTION OF FELDMAN, STREICKER AND FELDMAN, attorneys for the plaintiff,

ORDERED, that the said motion be and the same hereby is in all respects granted, and it is further

ORDERED, that the defendants, and each of their members and officers, their representatives, agents or employees and
5. associates, and each and every individual defendant, and their representatives, agents or employees and associates, and any and all persons acting in concert with them, or in conjunction with them, or any of them, are perpetually and permanently enjoined and restrained:—

1. From interfering in any manner with the plaintiff or its employees in their lawful business.

2. From interfering with the plaintiff in any manner in obtaining its employees.

3. From assembling, molesting, interfering, threatening, intimidating, insulting, hindering, annoying or ridiculing any of
6. the employees connected with the plaintiff corporation, or with their families or friends, or doing anything whatsoever which will in anywise add discomfort to the employees of the plaintiff by reason of their employment with the plaintiff.

4. From obstructing the sidewalk or streets at or near plaintiff's premises, or the entrance to plaintiff's place of business.

5. From calling any strike against plaintiff or
7. against any firm, person or corporation dealing with plaintiff.

6. From congregating, standing, loitering or picketing at or near the place of business of plaintiff, or any points near where the plaintiff's employees leave their place of employment.

ENTER

P. I.

J. S. C.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

stance underlying this ritual? Of what is it that judges dispose when they grant, vacate, continue, affirm or reverse? The short and simple answer is—"rights" and threats against "rights".

An injunction is an extraordinary remedy the invocation of which is justified only in an emergency of a sort that may be characterized by the immediate danger that irreparable damage may be done to property, the term property being generally understood to include "good will" and "the right to do business" as well as tangible, physical things. Even in such an emergency the injunctive remedy is not supposed to be available if a remedy can be had in the ordinary courts of law. Furthermore, remedy by injunction is not supposed to be available to restrain acts which are crimes, merely. The criminal law, it is frequently remarked, is a standing injunction against crime. Equitable relief by injunction is supposed to be available in such criminal cases only when the criminal act is calculated immediately to cause, or is done in a situation that is calculated immediately to produce, irreparable damage to property, as above defined. However, even acts the damage from which is reparable may be guarded against by injunction, if a repetition of these acts is probable—this in order to avoid the necessity of numerous litigations. If the damage is not irreparable and if the act is not likely to be repeated injunctive relief is uncalled for.

These are substantially the criteria, formulated in the common law, which at least theoretically guide and limit courts of equity in the issuance of injunctions in New York State. But in connection with these criteria we must consider other common-law rules that are recognized in this state. These other rules have to do with rights: Employers have a right to do business and to the "good will" which means profits, and these rights are property rights. If you reduce an employer's profits you destroy his (business) property. Trade unions, it is recognized, have a (not unlimited) right to strike. They have a right to picket. Any employee has the right to quit work when he pleases. He has the right, in the absence of a contract of employment for a term, peacefully to persuade another to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

quit. He has the right to persuade others not to work for a certain employer. When he does this he is acting, essentially, as a picket and he has a (not unlimited) right to picket. Obviously the strike and still more obviously the picket line may, by virtue of the fact that they exist, make meaningless the employer's right to do business, destroy his "good will" and so destroy his property. Indeed any interference with his business is likely to lessen "good will" and so "destroy property". The judge in equity, then, is faced with a dilemma of rights every time he is asked to grant injunctive relief in a labor case: the employer has a right to do business without interference, a right to profits. The employee has a right to strike and to picket. But striking and picketing interfere with the employer's business, reduce "good will" and profits, destroy property. Whether the employer is entitled to protection becomes, then, a nice question, which the court must answer by looking for justification into the purpose of the strike, scrutinizing the character of the picketing, exploring the whole labor situation; or by application of the magistrate's personal political philosophy; or by hunch.

In the group of cases here under scrutiny, therefore, it should not be a matter for surprise that in one case a particular activity is not enjoined, while in another case in the same industry, and under similar circumstances, an injunction will be issued against exactly the same act; or that, in the same case, one justice will refuse protection and at a later hearing another will grant it; or, even that, in the same case, the same justice will refuse protection and in a later decision grant it, or vice versa.

Let us look now at the contents of the decrees in the present cases. The injunction decree or order is the instrument signed by the presiding justice which restrains the defendants from doing certain specified acts. In practice the judge does not himself write out the decree, but instead both the plaintiff and the defendant, at the close of the hearing or trial, or even after the decision has been handed down, by their attorneys present an order to the judge for his signature. The order presented by the plaintiff is one restraining the defendants

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and granting the injunction and the defendant's order is one denying the motion for injunction. The judge then reads over the orders presented, makes any corrections he may wish and signs one of them. The corrections in most cases are made with a pen, the orders being rarely rewritten by the judge. The language of the decrees is very much the same in all. With one exception the decrees herein studied enjoined "the defendants, their and each of their agents, servants, attorneys and confederates and any and all persons working in aid or in conjunction with them or any of them". In the single exception the order recited the foregoing language and added, "and all persons connected with them" (*Maegert v. White Goods Workers,* 1923, Kings County).

In a sense all prohibitions contained in injunction orders are tantamount to prohibition of some form of interference with the plaintiff's business. So picketing is prohibited because by picketing the plaintiff's business is interfered with. It is interfered with also by the calling of strikes against firms doing business with the plaintiff. But the order may, and usually does, endeavor to protect plaintiff against such interferences by the use of language much more precise. Thus the following form of words (or something very near it) occurs, among other restraining clauses, in at least sixteen cases: "interfering with or obstructing in any way plaintiff's business or good will". Less often, but still very frequently, and sometimes in the same decrees containing the above phraseology, we see this: "hindering, hampering or harassing the free dispatch of plaintiff's business". Still less often, this occurs: "impeding or hampering the plaintiff's business by means of threats, violence or intimidations". In two instances, the order forbids: "interfering with the plaintiff's business by any unlawful means". Finally, in no less than six cases it is not considered sufficient to enjoin interference; *agreement* to interfere is also tabooed in these or similar words: "combining, conspiring or agreeing to obstruct plaintiff's business in any way".

A second sort of injunctive taboo describes more exactly the sort of interference that is prohibited. It refers to interference with persons (employees and others) having dealings

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

with the plaintiff, and in some cases specifies that interference having a certain quality—and that kind of interference alone—is barred, as "interfering in a threatening manner". One of the most frequent formulas runs: "coercing, threatening, intimidating, assaulting, halting or turning aside against their will those who would go to or from plaintiff's place of business". In two or three cases it takes this form: "hindering in any way any person doing business with or who may do business with the plaintiff". In one instance it runs: "unlawfully annoying in any manner, any person connected with the plaintiff". In still another, much more sweepingly and indefinitely, it reads: "intimidating by manner, attitude, speech, number and other means".

A third group of forms of taboo relates to interferences with the employer's business by conduct which affects his contract rights. The contracts referred to are generally, but not invariably, (term) contracts of employment. The so-called "yellow dog" contract, although it is often found to exist in these cases, seems to be very infrequently mentioned in the restraining clauses. Prohibitions against interference with contract rights occur in nearly all of our needle-trade cases. The most common form is: "interfering with the obligations of contract employees of the plaintiff" or "persuading contract employees to quit". Another very general form which comprehends all forms of contract right, employment and other, is: "any acts injurious to the plaintiff under certain contract rights". Less frequently the form is: "anything in violation of contracts between plaintiff and his employees".

A fourth group of prohibitions deals with the conduct of defendants in relation to plaintiff's employees but has no reference to employment contracts. In from one-third to one-half of our cases we find this: "instigating or inducing plaintiff's employees to quit". Less often it is: "inducing plaintiff's employees to join defendant union".

A fifth group of taboos relates to interference with employer-plaintiff's business by picketing. Here the prohibition relates more to the *method* of interference than to the immediate object, as procuring a breach of contract, getting a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

new member into the union, etc. But generally, in these clothing cases, specifications regarding method do not analyze the term picketing so as to interdict only "peaceful" or "lawful" picketing. In more than half the cases the prohibition is against "picketing" or "picketing in any way". In one case defendants are prohibited from "employing persons to become engaged in picketing". In five cases, at least, it is not picketing that is forbidden, but "patrolling, marching or parading in, about or in front of plaintiff's place of business"; and in no less than four cases, it is not "picketing" but "bannering", as thus: "publishing or distributing circulars or other matter or carrying signs or banners declaring a strike to exist".

A sixth group is related to picketing but is less definite in connotation. It relates generally to congregating. In about half of our cases we find these prohibitions against crowds, and most frequently they are worded like this: "congregating at or near or standing in the immediate vicinity of plaintiff's place of business". In three cases the wording is "obstructing the sidewalk near the plaintiff's place of business"; and in one case it is: "so acting as to collect crowds".

A seventh form of prohibition relates to strikes against the plaintiff and in at least ten of our cases it runs substantially as follows: "causing, directing, instigating or sanctioning any strike against the plaintiff". Restraint of strikes seems to be somewhat more frequent in the clothing trade than in other industries in New York.

The remaining types of taboo, with a single exception, are those which forbid interference with plaintiff by means of the boycott. The following one, however, seems only to prohibit the secondary boycott: "calling a strike against persons doing business with the plaintiff". The second sweepingly forbids: "instigating a boycott against plaintiff"; and the third prohibits defendants from: "issuing orders to producers not to produce for, or to sell to, the plaintiff".

The four remaining forms of taboo, each of the first three being found in only one case, the fourth in two cases, prohibit interference with the plaintiff's business by: (1) "assaulting,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

molesting, threatening, intimidating, insulting, hindering, annoying or ridiculing any employee connected with the plaintiff, or their families or their friends, or doing anything whatever in any wise to add discomfort to the plaintiff's employees by reason of their employment"; (2) "any act to disturb the peace of the community"; (3) "calling the name of 'scab'"; (4) "violence or threats of violence".

It is significant that in the majority of cases where picketing was mentioned in a decree, it was enjoined absolutely and without qualification. There were ten cases, however, where the judges issuing the orders evidently considered that picketing was lawful within certain limitations. The limitations put on picketing in these ten cases are as follows. As to conduct: silent picketing by no more than two members (*Braverman v. Sigman,* 1926, N. Y. Co., temporary injunction); picketing to be done in an "orderly manner" (*S. and W. Costume Co. v. Sigman,* 1921, N. Y. Co., *ex parte* order); peaceful picketing unaccompanied by violence (*Rentner v. Sigman,* 1926, N. Y. Co., *ex parte* order). As to numbers alone: two pickets allowed (*Markowitz v. Sigman,* 1923, N. Y. Co., permanent injunction; *Belle Maid v. Sigman,* 1925, N. Y. Co., temporary injunction; *Maisel v. Sigman,* 1924, N. Y. Co., temporary injunction); six pickets allowed at the main entrance and four at each of the others (*Rentner v. Sigman,* 1926, N. Y. Co., temporary injunction); one picket at each entrance (*Richter Bros. v. Freedman,* 1921, N. Y. Co., temporary injunction). As to area of picketing: picketing prohibited within four blocks (*Tailored Woman v. Sigman,* 1926, N. Y. Co., temporary injunction); picketing prohibited within three blocks (*Starr Pleating Co. v. Sigman,* 1926, N. Y. Co., *ex parte* order).

There were two cases in which picketing was not mentioned in the decree but a definite limitation was put on "congregating at or near the vicinity of the plaintiff". One of these cases prohibited congregating within ten blocks of the plaintiff's business.[1] In the other case[2] the judge believed that sufficient

[1] This case, *International Tailoring Co. v. Hillman,* 1925, was given more publicity than any other single one in recent years. *Supra,* pp. 90-101.

[2] *Finkelstein v. Hillman* (N. Y. Co., 1926).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

protection would be afforded if the defendants did not congregate within five blocks.

The foregoing array of the prohibiting clauses in injunction orders reveals how heavily has weighed in the judicial mind the importance of protecting the business and good will of the plaintiff-employers and their individual contracts of employment, even those of the so-called "yellow dog" variety; and to the end of assuring such protection, just as heavily has weighed the importance, as the justices saw it, of the absolute taboo of picketing.

On the other hand, however, despite the ruling of the Hitchman Case[1] which, incidentally, is cited more frequently than any other single case in such opinions as have accompanied the decrees in our clothing cases, it will have been noted that very little effort has been made in these cases, at least, to enjoin defendant's practice of inducing plaintiff's employees to join their unions. Of course, it may be said that this is implicit in the taboos against interference with "yellow dog" and other employment contracts. But, if this be the case, since injunction orders are supposed to be explicit, it would seem that a somewhat serious criticism of the form at least of the injunction order is warranted.

P. F. BRISSENDEN
C. O. SWAYZEE

COLUMBIA UNIVERSITY

[1] *Hitchman Coal and Coke Co. v. Mitchell*, 245 U. S. 229 (1917).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

REVIEWS

Le Continent américain et le droit international. By FRANCISCO JOSÉ URRUTIA. Paris, Rousseau et Cie., 1928. — xviii, 404 pp. 70 francs.

This learned historical and philosophical treatise by Dr. Francisco José Urrutia, former minister of foreign affairs of the Republic of Colombia, though entitled *The American Continent and International Law*, is really a history of the effort to create and have accepted by the United States a law securing to the Latin-American states immunity from interference in their dealings with foreigners within their borders.

This proposition was formulated by Dr. Drago, the Argentine minister of foreign affairs, at the Second Pan-American Conference in 1902, and since that time has been known as the "Drago Doctrine". It was expressed in the formula that the public debt of an American state cannot justify armed intervention or occupation of its territory by a creditor state. This also had been put forward by Dr. Carlos Calvo at an earlier date. It is based upon the asserted juridical equality of states. To secure its acceptance, Dr. Alexander Alvarez, an eminent Argentinian jurist, advocated the recognition of an "American International Law", as distinct from the Public International Law of Europe. Although the existence of such an American code was rigorously refuted by Mr. John Bassett Moore and by others, it has been persistently urged by South American statesmen and writers. It found expression in the proposed treaty drafted by the Conference of Jurisconsults held at Rio de Janeiro in April 1927, which asserted that:

> (Art. 2) States are juridically equal, enjoy equal rights and possess the same capacity for their exercise. The rights of each one do not depend upon the power at their disposal for their exercise, but solely upon the fact of their existence as an international juridical personality.
>
> (Art. 3) that no State may intervene in the internal affairs of any other State.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The same contention was made by Dr. Calvo in his treatise on international law in the following language: "America as well as Europe is inhabited today by free and independent nations, whose sovereign existence has the right to the same respect and whose internal public law does not admit of intervention of any sort on the part of foreign peoples whoever they may be". To emphasize and enforce this doctrine, a provision known as the Calvo clause has been embodied in constitutions and laws of the Latin-American states and in concessions and contracts made by their governments with foreigners, designed to compel the latter to waive all right to protection by their own government. The government of the United States has not accepted these provisions as depriving its nationals of all right of redress against the arbitrary and unjust conduct of the government of a state in which they have acquired rights, and in which, by international law, they are entitled to the protection of their own government.

The doctrines of Calvo, Drago and Alvarez would wholly ignore the difference between states having responsible, well-organized governments and those in an imperfect state of development. They would subject a foreigner to the uncontrolled will of a state in which he had substantial interests, were it the Argentine, Brazil or Chile, or Haiti, Nicaragua or Mexico. But the principal aim of the successive conferences of representatives of South and Central American states which are reviewed by Dr. Urrutia would seem to have been the assertion and the recognition of these doctrines. Fortunately, the progress of forming stable and responsible governments in most of the states and the abandonment of the habit of revolution is rendering much of this advocacy unnecessary. States with stable governments are sufficiently protected from invasion of their national rights by the application of the well-settled rules of public international law.

Dr. Urrutia gives an interesting history of the efforts of a few enlightened men in the states formed out of the Spanish colonies in South and Central America to establish the rule of law instead of that of force in their relations with each other—a history which shows how far in advance of their time were a few of their great statesmen in the early nineteenth century, and how acute was the sense of local importance and autonomy in the minds of the majority of the public men of the newly formed Latin-American states. Due praise is given to the enlightened views of Bolívar "the liberator", who, as Dr. Urrutia says, recognized the need of uniting the new nations into

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a compact league, not only with a view to their common defense, but also to secure international justice in their relations with each other and with other peoples. The first practical result of his policy was a treaty of union and confederation concluded by Colombia successively with Peru (1822), Mexico and Chile (1823), Buenos Aires (1823) and finally Central America (1825). In 1824 Bolívar addressed a circular letter to the governments of the South American states and that of the United States, inviting them to send representatives to a Congress to be held at Panama, with a view to the formation of a League of American Nations on the basis of the regulation of the foreign policies of these nations according to a common law accepted by all, submission to an arbitral authority constituted in common agreement, and reciprocal protection in case of external aggression. The United States decided to send delegates, but without authority to enter into any alliance, and the government of Great Britain, which also was invited, promised to send a representative authorized to take such part in the work of the Conference as should be compatible with the neutrality of England toward Spain and the Spanish Americans. Actually, only Colombia, Mexico, Peru and Central America were represented at the Congress, which met June 22, 1826, and only Colombia ratified the treaty which was formulated by the Congress—a treaty in which were anticipated many of the provisions of the Covenant of the League of Nations of 1919. If ratified, this treaty would have created a confederation of the Latin-American states and settled the principles of international law that should govern their relations among themselves and with other nations in times of peace and of war.

Dr. Urrutia traces the history of successive later conferences of the Latin-American states, at which treaties were formulated, but never ratified, embodying high ideals of international relationship, and reflecting credit on those who prepared them. As a result of these efforts, "When the first Pan-American Conference met on October 2, 1889, there was discovered long inscribed in the conscience of the American peoples, the principles which should serve them as rules, as well in their mutual relations as in their relations with other States of the world". These doctrines Dr. Urrutia enumerates as including coöperation of all American states with a view to a union in defense of their independence, integrity and democratic institutions, and with a view to harmonizing their common welfare; the establishment of their relations on a basis of absolute juridical equality, and consequently the condemnation of for-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

eign intervention, as well as of violent methods to settle international conflicts; the adoption in the largest possible measure of a system of arbitration and mediation, which implies a reduction of armaments; the severe and inflexible repression of such practices as the slave trade; the humanization of war by the suppression of certain barbarous methods, inadmissible among civilized and Christian peoples; the necessity of elaborating a code of international law designed to serve as a concrete rule for relations between states and the necessity of adopting sanctions to secure respect for such a code. In all the conferences between the South American states, great emphasis was laid upon arbitration of international disputes and the codification of international law. Dr. Urrutia reviews the work of the Pan-American conferences held respectively in the years 1889, 1901, 1906, 1910, 1923 and 1928.

The Latin-American republics were not invited to the first Hague Peace Conferences in 1899, but they participated in the second Conference held in 1907, where they strongly urged the acceptance of the doctrine of obligatory arbitration of all international disputes, and although this failed, their advocacy contributed greatly to the acceptance of the idea in principle. These states also consistently have urged the codification of international law as an important step in securing the general acceptance of the compulsory arbitration of international disputes. The history of all these efforts is well told by Dr. Urrutia in a volume which contains much useful information. There runs throughout the book quite an evident vein of perhaps justifiable racial pride, in referring always to "the American states", when speaking of those of Latin America. Our neighbors to the South always resent our appropriation of the words America and Americans. But the indisputable size and importance of the United States would seem to render futile any attempt to change this habit. The designation "United States of America" may seem arrogant to South American writers, but it was adopted in the constitution of 1787, when the South and Central American states were still provinces of Spain, and is not likely to be changed.

In any future edition of the book a number of typographical mistakes should be corrected. Thus 1910 and 1911 on page 29 should be 1810 and 1811 and similar errors occur on pages 30, 32 and in several other places.

GEORGE W. WICKERSHAM

NEW YORK CITY

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Der Gedanke der Internationalen Organisation in seiner Entwicklung. Volume I, 1300-1800. Volume II, Part I, 1789-1870. By JACOB TER MEULEN. The Hague, Martinus Nijhoff, 1917, 1929.—xii, 397; xii, 372 pp. Gld. 9 each.

These two handsomely printed volumes from the house of Nijhoff, written by the distinguished librarian of the Peace Palace at The Hague, constitute a truly monumental if not a definitive history of the idea of international organization from the Renaissance to recent times (Volume II is to be continued to 1889). The vigorous and comprehensive scholarship of Dr. Ter Meulen has provided us with a work which is at the same time encyclopedic as to facts—in spite of the author's modest disclaimer—and very suggestive in analysis.

In the first volume is given an extremely suggestive discussion of the development of the international idea in earlier times, followed by a survey of the various projects for international organization put forward from Dubois to Kant, and capped by a discussion of the content of these projects on certain critical problems of international organization, and a consideration of the effect on international practice of these theoretical plans for international government. The revival, by the seventeenth century, of the idea of a supernational community (pp. 10-13), the development of the concept of an international solidarity of interest and mutuality of service (pp. 61-67), and the emergence of the idea of permanent peace (pp. 68-79), constitute the most striking though not necessarily the most important elements in the first section. The review of individual projects in the second section is what any such review must be, with numerous items added beyond the familiar names. And the summarization of these projects in the third section is what would be expected also.

It is in the consideration of the effect on international practice prior to 1800 of these theoretical programs for international government, also contained in the third section of the first volume, that questions of value emerge. And yet the state of affairs is—or was—very simple. As Dr. Ter Meulen brings out fully and sharply (pp. 356-62), the nations were not ready at this time to adopt the ideas of the poets and theorists and organize an international community of any serious degree of authority. In their internal constitutional character (the predominance of personal sovereigns and doctrines of absolutism), and in their relations to one another in fact and in principle (immature international intercourse; immature

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

legal restraint on national sovereignty), the nations were still far from ready for effective international organization. "In the period down to the French Revolution pacifism consisted merely in one long series of fantasies, expressions of the pantheistic ideals of youth" (p. 362).

In the second volume now at hand we are given reviews for four periods, viz. 1789-1814, 1814-1815, 1815-1848, 1848-1870, of the later development of both general ideas and specific projects for international organization. The chapters on German cosmopolitan ideas (pp. 40-47), Napoleonic projects and ideas (pp. 93-117), and on the spread of ideas of international organization in America (pp. 301-308), seem most suggestive here.

At the same time that the ideas and projects of international organization become more specific and practical during this period, they also lose much of their clarity and detachment. The persons and groups (peace societies) emitting ideas and projects for peace are more numerous, less distinguished, and more involved in practical politics, for good or ill, than during the earlier centuries. Further, the ideas and projects emitted seem to have less effect or a lower status, as abstract ideas, but threaten to have more concrete practical influence. As the author points out, the movement for international organization and peace is shortly to be taken over by practical politicians and public officials. The recommendations made long before by philosophers and poets were to be carried out, in part at least.

Two important questions arise out of this situation. Is a study of the recommendations for international organization made by political theorists through six centuries prior to the time when action was taken by the nations in that direction, of any value? Dr. Ter Meulen, of course, believes that it is (vol. II, p. 10), but he does not indicate specifically why such study is worth while. Even if the earlier plans and ideas did eventually bring the nations to a conviction that international organization was desirable it may be doubted whether this can be attributed to their special characteristics so much as to their common general tendencies. Have the concrete provisions made in late years for international organization been drawn from the historic projects?

In the second place, if, perchance, the nations have been not so much persuaded into international organization by preachment as driven into it by pressure of practical need, did that need exist six centuries ago, and were the philosopher-poets merely more sensitive

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in their perceptions and more objective in their judgments of value than common men and prejudiced politicians? Or has the situation only come really to justify international organization in recent days?

We may hope that Dr. Ter Meulen will express his opinions on such issues in his concluding volume.

PITMAN B. POTTER

UNIVERSITY OF WISCONSIN

America and Europe and Other Essays. By ALFRED ZIMMERN. New York, Oxford University Press, 1929.—vi, 213 pp. $3.00.

This volume contains ten essays, only two of which have a direct bearing upon America. The essays were written at various times during the past eight years and are consequently of varying value as regards application to the problems of today. To the reviewer Essay VIII, entitled "Great Britain, the Dominions and the League of Nations", and Essay X, entitled "Prospects of Democracy", are the most valuable of the series. There is an underlying thought that runs throughout all the essays, viz: that scientific invention has made the people of all the nations so interdependent that the old distinction between foreign affairs and domestic affairs in the conduct of government of any nation cannot be maintained. Action upon matters that are apparently solely national usually has important foreign repercussions. Nothing, therefore, can be more important today for human welfare than that the statesman, civil servant and individual citizen be educated in international relations.

The books of Alfred Zimmern previously published have already made readers aware of his power of keen analysis and his ability to lay bare the fundamentals of a problem. And his career has given him the experience which would enable him to write with the wisdom that characterizes these essays. His years of university teaching in England gave him the knowledge and background to enable him to write so penetratingly in the essays on "American Universities" and "The Scholar in Public Affairs". His service in the Foreign Office during and after the War provided the materials and experience which make his statements concerning the relative places in modern governments of the civil service expert and the member of the legislature so unusually convincing. His position as Director of the School of International Studies in Geneva and as Directeur Adjoint de l'Institut International de Coopération Intellectuelle at Paris give him unique opportunity to study the forces at work in the world which furnish the knowledge for such powerful

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

essays as the one entitled "Nationalism and Internationalism" and the other entitled "International Organization, Its Prospects and Limitations".

These essays are suffused by a fine feeling of idealism but in few books has the reviewer found an author facing the realities of the post-war world so clearly. Almost on the first page he says:

> We are only just beginning to realize that the age in which Alsace-Lorraine and the Irish question were first-class political problems has passed away beyond recall, and that in the new era which has dawned the distinctive problems which hold the keys of peace and war and command the daily vigilance of statesmen are of a different order.

In discussing the passing of Romanoffs, Hapsburgs and Hohenzollerns in his essay on "The Prospects of Democracy" he elaborates the idea which has impressed itself upon all thoughtful citizens: "Democracy today has a new opposition to face. Its arch-enemy is not inherited privilege, but private power. It is government itself which is in danger". While warning the reader of the hold that fetishes have upon the popular mind and the need that statesmen have of making allowance for that fact when conducting international relations, he can nevertheless say:

> The broad fact remains that sovereignty and cooperation are antithetical conceptions, representing antithetical tendencies. Sovereignty is a conception applicable to a world of self-contained units. Cooperation is a conception applicable to a world of interdependent units. . . . It will be an interesting study to watch its [sovereignty's] desuetude. Already it is less familiar in the world of affairs than in the world of the study; but it still survives on the lips of plenipotentiaries, not, indeed, in its old magnificence, but as a last resort in a difficult argument when their instructions forbid them to give way.

And the advocates in Great Britain of economic unity within the Empire might read with great profit the essay entitled "Great Britain, the Dominions and the League of Nations". In it he says:

> We are driven therefore to the conclusion that there are, broadly speaking, no *special material* interests common to the countries of the British Empire. By special interest is meant interests shared by them all but not shared by other territories. . . . The common interests of those governments and their peoples are not particular to themselves but are common to all or most other people. In other words they are international.

This is in partial explanation of the failure of the quadrennial Imperial Conference to bring into existence new imperial institutions.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Mr. Zimmern feels that as independent self-governing nations, the Dominions will look in the future to Geneva rather than to London to safeguard their international interests.

But enough has been quoted from these stimulating essays to indicate their value for the students of international relations. The book is most heartily recommended to their attention. One finishes reading it with the feeling that a serene and philosophic spirit has applied the wisdom that came from years of study and experience in human relationships to an analysis of present-day world problems that is thorough, realistic and accurate.

STEPHEN P. DUGGAN

INSTITUTE OF INTERNATIONAL EDUCATION
NEW YORK CITY

The War of Independence: American Phase. By CLAUDE H. VAN TYNE. Boston, Houghton Mifflin Company, 1929.—x, 518 pp. $5.00.

In the preface of his *The Causes of the War of Independence,* published seven years ago, Professor Van Tyne designated the book as the first volume of a trilogy dealing with the founding of the American republic (1763-1789). The second volume was to tell the story of the Revolutionary War, and the third to describe the steps leading to a more perfect union of the states under the Constitution. But the abundance of material contained in the Clinton and the Germain Papers, recently acquired by the W. L. Clements library at Ann Arbor, together with the newly published volumes of the Correspondence of George III and E. C. Burnett's substantial contributions to the history of the Continental Congress, have made it necessary for Professor Van Tyne to expand his projected trilogy into (at least) a tetralogy. In this second volume he has found room only for the "American phase" of the Revolutionary War, that is, the three years from the Battle of Lexington to the French alliance which followed the surrender of Burgoyne at Saratoga.

There is none of the "drum and trumpet" type of history here. Professor Van Tyne devotes only six of his twenty-three chapters to the battlefield, and these six chapters are a dispassionate, scientific appraisement of the merits and defects of the strategy and tactics involved in the contests around Boston, before Montreal, on the lower Delaware and on the upper Hudson. Nor does Professor Van Tyne exploit the opportunity which his theme and his material furnish to prolong the controversy with the critics who have impugned his

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

patriotism, and whom he answered with some asperity in the first of his Watson Lectures, delivered in the House of Lords on May 15, 1927. Only once or twice does he insert a remark which may be interpreted as a thrust at the "100 percenters": when for example, he says that the authentic Mecklenburg Resolutions of May 31, 1775, "are surely critical enough to suit the most fastidious patriot" (p. 291), or suggests that "after all, a cynic might ask", in view of Great Britain's problem of preserving her empire intact, whether "Lord North's purpose differed from that of Abraham Lincoln some generations afterward" (p. 186). His quotation of Admiral A. T. Mahan's opinion that "Arnold saved the Revolution" (p. 370) by his skilful Fabian tactics in delaying the British invasion from Canada for several months, will, of course, be wormwood to the "fastidious patriot".

Professor Van Tyne gives us a very penetrating analysis of the state of opinion in the colonies and in England, following the outbreak of the Revolution. Perhaps the most outstanding feature of the book is the group of chapters dealing with the evolution of the idea of independence in the southern colonies, New England, and the middle colonies respectively, tending rather to confirm the truth of the remark made by Jefferson to Daniel Webster in 1824 that "Virginia and the four New England states *made* the Revolution". There were five votes that could be counted on in the Continental Congress, said Jefferson, and "we had to pick up the other two to make a majority where we could". Certainly the lack of unity in the middle colonies was conspicuous enough to draw from Franklin the gibe that the Six Nations could give the colonials instructions on forming a federation. While Boston was being besieged by the Continental army and troops were being raised north and south, the British warship *Asia* in New York harbor was still getting its regular supplies from Long Island and the mainland (p. 233). John Jay, anticipating Woodrow Wilson's discriminatory counsel of 1918, was suggesting that we might fight the British government without hostility to the British people (p. 348).

Professor Van Tyne seldom yields to the besetting temptation of the historian to prophesy what would have happened had other counsels prevailed; but he does venture the opinion that if in July, 1775, "the British had sent [Governor] Dunmore a regiment from Boston, where many regiments were doing nothing, a Tory party might have been created in Virginia and the royal cause saved" (p. 203). But, considering the effect that the dispatch of British

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

troops to Boston had on the spirit of the colonists and the encouragement to the patriot cause that the brief reign of terror instituted by Dunmore himself in Norfolk furnished, is it not more probable that the summons of a regiment from Boston would have precipitated rather than prevented the movement for independence, and have justified Franklin's warning at the bar of Parliament that armed forces sent to America would not find a rebellion there but might very well create one?

In the last three chapters of his book, Professor Van Tyne deals with the very important topic of the Franco-American alliance of 1778, which closed the first phase of the War of Independence by bringing "the lone struggle of the weak American colonists against their powerful mother country" (p. 501) to an end. The fruits of that alliance are manifest in the closing scenes of the war, but the motives behind the alliance have been the subject of considerable controversy, especially since the publication, in the *American Historical Review* for October, 1915, of Professor E. S. Corwin's article on "French Objectives in the American Revolution" (which forms the first two chapters of his volume on *French Politics and the American Alliance*, published in 1916). Professor Corwin's contention that the real reason for the alliance was the determination of the Bourbon court to recover the mid-eighteenth century prestige of France which had been so severely shaken by the peace of 1763, was answered by Professor Van Tyne in an article in the April, 1916, number of the magazine (largely incorporated in the concluding chapter of the volume under review), emphasizing the fear that England and America might come to terms and together fall upon the French West Indies as the determining factor of the alliance. Of course there is no irreconcilable clash in principle between Corwin's view of the politico-dynastic motive of the humiliation of the British Empire (with the consequent elevation of the Bourbons in the balance of power) and Van Tyne's position that the "immediate occasion" of the alliance was the apprehension, vexing Vergennes' peace of mind from the beginning of the Revolution and rising to the point of desperation on the news of Lord North's conciliatory propositions, that the French government, doomed to a war with Great Britain anyway, might find itself confronted by the full strength of an Anglo-American alliance. The two historians are only gazing upon the obverse and the reverse surfaces of the same shield.

The ripe scholarship, the broad philosophical grasp, the candid

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

detachment and the engaging style of Professor Van Tyne's volume cannot fail to win for it the enthusiastic approval of students of the American Revolution, and to stimulate their anticipation of Professor Van Tyne's further contribution to this important epoch of our history.

DAVID S. MUZZEY

New Levels in the Stock Market. By CHARLES AMOS DICE. New York, McGraw-Hill Book Company, 1929.—x, 264 pp. $2.50.

Dr. Dice's book was introduced to the public at a very inauspicious time, for it appeared just after the most spectacular crash in the history of the stock market. The date of publication and the title of the book combined to give the public the impression that the author had gone sadly astray in his predictions. This inference is largely unjustified, though in the light of recent events it must be admitted that he has used colors somewhat too roseate in portraying the future outlook for industry and stock prices. On page 69, he predicts a decline of the Dow-Jones average to a minimum of 200 to 220. By November, 1929, the index actually declined to a point just below the 200 mark. Where Dr. Dice erred was in inserting in the book, at the last moment, a printed slip stating that the market would probably not go below 300. In this instance, second thought did not prove best!

The fact remains, however, that present evidence seems to bear out fully the theory of the author that the market is on a new level. He is presumably correct, also, in ascribing this new level of stock prices to improved methods of production, better organization of industry, a tendency toward coöperation among producers, and a growing belief on the part of the public that ethical standards in industry are improving. In the opinion of the reviewer, however, Dr. Dice greatly underestimates the effect of competition between producers. He seems to forget that new capital is ever seeking investment and that the fact that an industry is growing gives no assurance that the majority of corporations engaged in that industry are making satisfactory profits. The reverse is, of course, often true.

When everything is considered, however, the conclusion seems to be inevitable that the main thesis of the book is sound. Such weakness as it possesses pertains to subordinate points of economic theory. The author has, unfortunately, been guilty of loose reasoning or careless statements in a number of cases. For example, on page 68

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

he says: "Making money by judicious constructive investing should have been easy from 1903 to 1923. At least, so it seems to one who has the good fortune of having a chart of the movement of the market for this period before his eyes." The difficulty, of course, is to have the chart before your eyes in advance of the actual occurrence. It is always easy to make money in retrospect!

On page 85, the theory is expounded that employers are deliberately adopting a high wage policy in order to increase the purchasing power of their employees, thus making a better market for the products of their respective enterprises. Nothing is said about the fact that the employees of a given enterprise usually buy but a trivial fraction of its product. Is it actually true that a typical employer increases his wage rates in the belief that all others will do likewise and hence all will have a better market for their products? If such childlike faith exists, it is certainly a phenomenon well worthy of comment. Furthermore, why is it that a thousand dollars paid out in wages contributes more to the demand for goods than does a thousand dollars paid out in dividends?

On page 90, Dr. Dice contends that "the field of competition has widened. . . . The intraindustrial competition is broadened to include also interindustrial rivalry." Is there anything new about different industries competing for the consumer's income? Was it not just as true in Babylon as in the United States today?

On page 111, we read: "It may not be out of place here to remark that without doubt one great reason for the unemployment that exists in England and the slow progress made by industry is the fact that the Englishman has not been taught to want a greater variety of goods in increasing quantity." Since when has wanting goods increased the income of the consumer? Dr. Dice seems to have overlooked the significance of the old saying: "If wishes were horses, then beggars might ride." He also forgets that England is hiring over a million of her potential workers to remain idle.

On page 117, there is an implied indorsement of the theory that receipt of debt payments from foreigners in the form of goods will injure our industries. The remedy is, of course, very simple—we should donate all our exports. In this way we would protect ourselves from those foreign products! Clearly, mercantilism still survives, even among economists.

On page 130, the following statement is made concerning the dividend policy of American corporations except in very recent years: "When large earnings were made they were paid out, and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

when the lean years came the company was in difficulty and its stock sold at a great sacrifice. Those were the good old days!" As a matter of fact, a study of a large number of leading corporations shows that, in general, during the period 1909 to 1926, they paid out in dividends on common stock only about five-ninths of their net earnings available for this purpose.

By far the best part of Dr. Dice's book is the descriptive material contained in the later chapters. He gives a very good picture of the revolutionary changes which have taken place in the production and distribution of products and in the financing of enterprise. His chapters dealing with brokers' loans and investment trusts are very enlightening. Recent developments appear to indicate, however, that he underestimated the effect upon the stock market of withdrawing from the loan field those brokers' loans made for the account of "others".

WILLFORD I. KING

NEW YORK UNIVERSITY

Versuch einer autonomen Lehre der Währungspolitik. By ERICH EGNER. Leipzig, A. Deichert'sche Verlagsbuchhandlung, 1928.—vii, 232 pp. Rm. 12.

Monetary and banking conditions since the close of the War have been of so pressing a character in nearly all countries as to produce a large new literature, much of which is written from a more or less opportunistic point of view. In Germany particularly the post-war inflation, and later on the reconstruction of the monetary and credit system, have given rise to a great output of monographs on almost every phase of money and banking. But these, like so much of the post-war literature of the subject, have been largely fugitive or transitory in nature. It is only lately that the study of money and banking has returned fairly definitely to its original paths, and that attention has again begun to be given primarily to fundamental questions of theory.

Dr. Egner's research into the question of an independent basis of monetary policy is an effort to get away from such a purely concrete and immediate aspect of the subject, and to develop certain of the theoretical phases of money and banking which for some time have been largely neglected. So large a field is covered in this book, and so many familiar notions are waved aside, either as of little immediate importance or as presenting questions very different from those ordinarily associated with them, that the reader has a good deal

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of difficulty in assigning to this monograph its proper position as a contribution to current discussion of money and banking. Certain of the analyses it contains are carefully worked out and contribute materially to a better understanding of monetary and credit problems. Others are confused, and appear unduly abstract and hypothetical in their presentation, with conclusions or inferences of correspondingly doubtful worth.

We may take as an example of the method followed by Dr. Egner his presentation of the development of a credit economy and its relationship to the monetary system. According to him, the development of book credit in the modern economy has been such as to reduce actual gold to a merely nominal place in practical use. Credit and credit instruments, therefore, have assumed the principal place, and consequently the problem of the state, or the authorities which have to do with money, is to see to it that in the operation of credit systems nothing is done which would interfere in any way whatever with the smooth operation of the monetary system that has been arbitrarily established by the governmental power. This end, however, is by no means easy of accomplishment, inasmuch as the growth of credit has a powerful influence in changing prices and in altering the general course of business—even to precipitating or deferring the appearance of commercial crises or panics. Serious questions of public policy thus arise, having to do with the extent to which the state, either through the central bank or in some other way, shall control credit expansion, with its relation to interest rates and its bearing upon saving.

All these questions of credit control, price regulation and adjustment of credit to monetary systems call for early attention, and will probably best be solved through the agency of strong central banks, which alone are likely to prove effective machines for maintaining the proper relationship between outstanding credit and actual gold on hand, as well as that between the quantity of gold in the country and the world's stock of gold. However, after much general advice and rather vague discussion of certain principal issues, Dr. Egner merely remarks that the settlement of the entire problem of credit and its relationship to prices must be adjusted in some way other than that originally attempted when it was sought to make credit expansion impossible by law. The methods followed in the English Bank Act of 1844, for example, if carried to a logical conclusion, would seem to render the financing of modern business quite out of the question. His other conclusions are equally general, but are not

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in all cases equally acceptable to the conservative student of money and credit. The subject is often viewed by the author as it if really had no practical limitations or restrictions, but were in fact as well as in theory independent or abstract.

On the whole, Dr. Egner's book is a monograph which will be of interest to students of credit theory, and particularly to those who are interested in the historical and comparative study of the subject. Beyond this small group its significance is likely to be less. No doubt that is exactly what the author contemplated, and no doubt it is a matter of indifference to him whether the book is read beyond this small circle. Possibly it is this very point of view that gives it value as a largely detached presentation of a complex subject.

H. PARKER WILLIS

Economic Foreign Policy of the United States. By BENJAMIN H. WILLIAMS. New York, McGraw-Hill Book Company, 1929. —xi, 426 pp. $4.00.

For an American student this is a new sort of textbook called forth by the recent wholesale participation of the United States in the economic affairs of the world. The writer has been true to his purpose, declared in his preface, of assembling, from a literature that is often filled with partisan criticism and official defense, an objective account of the foreign policies of the United States. The present reviewer thinks that he is sometimes too objective, too impartial, and that the book would gain in interest and value if the author were more free with his opinions and criticisms. For example, in his chapter on the interallied debts our author gives all the arguments and considerations that have been used the world over for and against cancellation without revealing exactly his own position in the matter. His concluding paragraph suggests, or rather permits the inference, that he is in favor of cancellation.

> There are few responsible Americans who believe that the debts should be cancelled forthwith and without some consideration in return. It seems, however, that wise statesmanship would stand ready to participate in a general readjustment in which reparations, the debts, and any other economic disabilities would be subject to such revision as would appear calculated to advance the best interests of the world.

This paragraph gives the temper of the book. One cannot tell whether the author is a liberal or an imperialist, a free-trader or a protectionist. He carries impartiality to the point of hiding com-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

pletely his own personality. It is therefore not a book which one can recommend to the general public as readable; it is lacking in style and literary quality, and is dry enough to satisfy the most exacting of our professional historians. But the book has other merits. It is an excellent textbook in its field, and a good book for supplementary reading in courses in international trade and international relations. It is packed full of facts clearly presented.

Professor Williams divides his book into two parts, the first dealing with the diplomacy of investment, the second with the diplomacy of commerce. There are chapters dealing with capital exports and capital embargoes, and then the great mooted question of the protection of American investments abroad comes up for extended discussion in chapters covering the general principles, our "due process doctrine," anti-revolutionism and manipulation, armed protection, financial supervision in its various forms, especially customs receiverships. Part I closes with the survey of the problem of the interallied debts referred to above. Part II, dealing with the diplomacy of commerce, is an extremely compact treatment of all the important aspects of this complex subject. Dr. Williams reviews the rise of commerce and the policy of mercantilism, and arriving at the present day surveys bargaining tariffs and reciprocity agreements, most-favored-nation treatment, the open and the closed door. There is a good exposition of our shipping policies, and an important discussion of raw materials. I want to recommend Part II to teachers of courses in international trade. Here in less than two hundred pages is a survey of the diplomacy of commerce which is necessary for a realistic treatment of international trade, and which should find a place in any discussion of economic principles and commercial practices. Foreign trade is inextricably bound up with international politics, and a purely economic treatment gives the student a very inadequate idea of its importance and significance.

In conclusion Professor Williams points out that the growth of international trade and finance is the factor making for American participation in world affairs. Our failure to join the World Court "has marked this country as clearly backward in the development of machinery for the friendly settlement of international difficulties", and with characteristic inoffensiveness the author suggests that in time we may be brought to closer and more confident coöperation with the League of Nations or other representative international agencies, as a result of our new economic position in the world.

SWARTHMORE COLLEGE HERBERT F. FRASER

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

History of Manufactures in the United States, 1607–1928. By VICTOR S. CLARK. New York, McGraw–Hill Book Company, 1929. 3 vols.—xi, 607 pp.; viii, 566 pp.; vi, 467 pp. $15.00.

Manufacturing. By MALCOLM KEIR. New York, The Ronald Press Company, 1928.—vii, 611 pp. $5.00.

Some twenty years ago the Carnegie Institution of Washington planned a series of volumes on American economic history which have appeared at intervals since 1915 and which have proved a veritable boon to teachers and students. The second of this series appearing under their imprint was Victor Clark's *History of Manufactures in the United States, 1607-1860* (Washington, 1916). This volume, produced with the most exacting technique of modern historical scholarship, easily surpassed any previous discussion of the same subject and immediately took its place as the standard history of manufacturing up to 1860. Already well known to students of economic history, it has fortunately now been reprinted by a commercial publisher and appears as the first of a three-volume history which carries the story to 1928. Although an occasional change has been made in the original edition and some additions are to be discovered in the bibliography, the reprint of 1928 is virtually as it appeared in 1916. With the exception of two chapters at the end of Volume III covering the manufacturing development during the World War and after, the material in Volumes II and III is the same as that printed in a limited edition by the Carnegie Institution in 1928. Volume II carries the story to 1893 and Volume III from 1893 to 1914.

The task of writing a history of manufacturing since 1860 obviously is no easy one. Although the sources become exceedingly voluminous as the years progress, the first-class monographs on separate industries can still be counted on the fingers of one hand. Dr. Clark, therefore, has practically been forced to plow a virgin field, and then to deal with the major problem of synthesis. The text displays little dependence upon secondary materials, but reveals an able exploitation of trade journals, commercial papers, manufacturers' bulletins and other sources. Although the style is clean-cut and forceful, this is hardly a book for the general reader, but is intended primarily for the serious student. For the latter it is a mine of information; both teacher and student now have available a rapid introduction through the voluminous footnotes to much of the printed source materials as well as a synthesis based on much ex-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

haustive research. The history has been divided into five periods: the Civil War, 1860-1865; reconstruction, 1865-1873; big business in the making, 1873-1893; the industrial state, 1893-1914, and the World War, 1914-1928, with almost four-fifths of the space devoted to the years 1873-1914. Fortunately these divisions are usually prefaced by a chapter of background and concluded by a summary of interpretation, chapters which in many ways are the most valuable in the volumes.

The reviewer will find little to take exception to in either the facts or their interpretation. He may, however, quibble over the emphasis which should be placed upon many factors which play upon the subject of manufactures—labor, transportation, marketing, crises, prices and technical processes. While Dr. Clark has held closely to his main task, he has by no means ignored these factors. Some student particularly interested in certain of the newer industries may likewise feel that adequate attention has not been accorded to them. On the other hand, there are few industries which have not been given some treatment, and the handling of certain of the major industries, such as iron and steel and textiles, is exceedingly voluminous and exhaustive. Furthermore the treatment is in no way sectional; for the first time it is possible to find here an adequate treatment of the recent rise of southern manufacture. The chapters on the World War and the years following are in no way comparable to the rest of the work, either in detail or in research; they are simply a survey of the salient features of our manufacturing development during the past few years, and it is hoped that Dr. Clark will find time eventually to deal with these later years in the same scope that he has covered the rest of our manufacturing history. The work is equipped with adequate bibliographies, while the indexes at the end of each volume are models for a work of this type.

In the book on *Manufacturing* by Professor Keir one discovers his earlier *Manufacturing Industries in the United States* (New York, 1920) now revamped and doubled in size. Unlike Dr. Clark's volumes, which are designed almost exclusively for the specialist, Professor Keir's book is written for the college undergraduate and the general reader, and unlike the more dignified tomes of Clark, the style of Keir is obviously adapted to the tired business man and the somnolent sophomore. The result is an occasional dictum, startling for its breadth and finality, which might easily lead to legitimate argument. The omission of footnotes and bibliography may appeal to the general reader and immature student but their

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lack will badly irritate the teacher and others. Their omission is the more to be regretted because Professor Keir has included much valuable and interesting information, the type of material not easily accessible but which whets the appetite for research. The first six chapters give a general introduction and background to the subject of specific manufacturing industries. Then follows an exceptionally interesting chapter on the peddler and his services to early manufactures, after which the histories of iron, steel, meat, cotton, wool, silk, leather, the shoe industry, paper, cement, brick and pottery and glass are traced successively in fifteen chapters. The book closes with two chapters on labor, simply summaries of well-known facts which contain no evidences of the research apparent in the rest of the book. Keir has shown less skill than Clark in integrating his subsidiary material and the result is a feeling in spots of incoherence and incompleteness. In spite of this and of the fact that the book is designed as a text, Professor Keir has accomplished two things which lift it out of the class of the ordinary manual. He has made economic history interesting and he has incorporated enough first-hand research to make the volume of much value to his colleagues in economic history.

HAROLD U. FAULKNER

SMITH COLLEGE

Some Economic Factors in Modern Life. By SIR JOSIAH STAMP. London, P. S. King and Son, 1929.—vii, 279 pp. 10s. 6d.

Many full-time professional economists would think their time well spent could they produce in two years a volume so rich in suggestion and subtlety of thought as is Sir Josiah Stamp's recent work. And yet Sir Josiah during the period covered by these papers has not only acted as the managing director of the London, Midland and Scottish Railway, the largest and perhaps the most economically progressive of all the railway groups in Great Britain, but has also been a prominent member of the Royal Commission on National Debt and Taxation which sat from 1924 to 1927, and, as is well known, was one of the British representatives responsible for the recent Experts' Report on Reparations.

The eight papers in the book provide an excellent sample of the wide range of Sir Josiah's interests and of his capacity for analytical subtleties, whether he treads such familiar ground as Inheritance,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Amalgamations, or Industrial Coöperation, or whether he explores new territory in discussing the economic aspects of Aesthetics, Invention or Stimulus. Nor does the dissemination of sound doctrine imply any heaviness of form, as is shown by the delightful and witty paper on Human Nature in Statistics, read before the Students' Union at the London School of Economics. The popular lecture on Aesthetics is perhaps happier in its choice of subject and illustration than in the success with which a case is made out for the fundamental harmony of the spheres of economics and aesthetics, and for the argument that "it is a short sighted *economic* [my italics] policy not to foster and protect aesthetic values" (p. 17).

Undoubtedly the most interesting of all the papers is that on Invention, for the important paper on Inheritance, although disentangling with great skill the complex of prejudice, debatable theory and undetermined questions of fact which characterizes the usual treatment of the subject, nevertheless covers ground which has been frequently traversed, although in no such orderly manner, in recent years. But the paper on Invention is a masterly examination of the bearing of the fact of invention upon various aspects of economic theory, rich in suggestions for fruitful research. Particularly stimulating is the analysis of the factors bearing upon the length of what is termed the period of industrial, as opposed to scientific, gestation of inventions. Nor does Sir Josiah confine himself to any narrow view of economics. He reaches out to fundamentals when he points out, in connection with the ever more rapid development and application of inventions, that: "Conscious attention to the art of thought, and still more to the subjective art of living, is the correlative problem to inventive advance. Advance even in gustatory enjoyment is something more than the continually swifter swallowing of interminable oysters, be their quality never so progressive" (p. 121).

For English readers, the reprint of the Sidney Ball lecture is particularly welcome, for in it Sir Josiah gives a useful review of and commentary upon recent American statistical work, and concludes by adjuring his countrymen to "go and do likewise". As a result of this lecture, which has greatly stimulated English interest in contemporary American work, a Social Science Training Research Committee has been set up to promote the development of quantitative work among English students.

E. M. BURNS

COLUMBIA UNIVERSITY

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Cambridge History of the British Empire. Volume I. *The Old Empire from the Beginnings to 1783.* Edited by J. HOLLAND ROSE, A. P. NEWTON and E. A. BENIANS. New York, The Macmillan Company, 1929.—xxii, 931 pp. $9.50.

In the field of great coöperative historical enterprises the various "Cambridge series" hold the leading place in the number undertaken and executed. Within recent years arrays of stately volumes have appeared covering modern, medieval and ancient history, British foreign policy and India, to say nothing of English literature. In the latest series, designed to include eight volumes, only the first has thus far been issued, just enough to give a foretaste of the quality of the project which subsequently will have to be appraised as a whole. Among the points stressed by the editors in the preface may be noted two guiding aims: first, that the work "will exhibit the present state of knowledge of the subject", and secondly that the writers will endeavor "to keep in due perspective the progress of the mainland and island communities of the West and to treat the general growth of the Empire in its relation to the conflicts of Europe." The introduction is marked by the ripe reflections which one might expect from such a seasoned campaigner as Sir Charles Lucas, who, as former undersecretary of state for the colonies and head of the Dominion department, is able to write from actual experience combined with extensive historical reading and reflection. In twenty-one pages he has produced a masterly survey of the main tendencies of imperial development that should serve both as a guide to the beginning student and as a serviceable résumé for those already well grounded in the subject. Of the twenty-six chapters which follow, the majority are supplied by scholars already known from previously published work. Among these the United States is represented by Professor C. M. Andrews. Three chapters are by the senior editor, two by Professor Newton, while the third editor, who it may be recalled has written chapters on colonial topics in the *Cambridge Modern History*, furnishes none for the present volume.

The danger to be apprehended from a work of this type is that it may fall between two stools: that it may prove too detailed and not sufficiently inviting for the general readers—particularly those whose palates have become jaded by the highly spiced condiments lately served—or that it may not contribute enough of substantial significance for the specialists. To an appreciable extent, the volume under consideration avoids each extreme of this danger. In-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

evitably, for the sake of continuity, there is some threshing of old straw, especially in the narrative; also, as might be expected, there is a certain amount of overlapping and repetition on the part of a few of the contributors. Moreover, some of them have already told at least a part of their story elsewhere. While the use of sources is not infrequently evident the bulk of the work is based on the results of recent scholarship, which, as has been seen, was what the editors were content to claim. Nevertheless, there is a good amount of happy phrasing and even of vivid writing, interspersed with fresh points of view and bits of new information. In this connection it should be noted that a few unpublished theses are cited. The bibliographies are extensive and carefully prepared, though apparently U. B. Phillips' *American Negro Slavery* does not figure among the list of relevant monographs. In a few instances at least the references in the footnotes are a bit capricious, if the reviewer may judge from a couple of cases where specific contributions of previous writers might have been definitely pointed out.

One great source of strength of the book, of which the editors made a special feature, is its comprehensive character. It not only takes into account the West Indies and the East, but also European background, development of colonial policy and institutions and even the general principles of international law. Another commendable feature is the prevailing spirit of scientific detachment with which the different aspects of the subject are presented. The chief possible exception is in the delineation of the New England Puritans by the late H. E. Egerton. While what he says to their detriment may be well founded, he might have added a bit more about their virtues.

The proof-reading is excellent; indeed, the reviewer noted only one typographical error, "enough" spelled with a capital (p. 637). However, a few statements might be questioned. When one reads of a "British Commonwealth of Nations mis-called an Empire" (p. 14) the query naturally arises whether the former term is an accurate designation for the whole structure. The "well timed interference" of the Hanseatic League in the Wars of the Roses (p. 31) requires more explanation. If Elizabeth rightly rejected Walsingham's plans "as too perilous", it seems hardly consistent to say that when the great secretary had to drop his "oceanic schemes" they fell into the hands of those "of less judgment" (p. 65). Although he was a victim of circumstances, not everyone would agree that Sir Edmund Andros was "a man of firmness and good sense" (p. 253). It might have been well to state just how the annual

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ship sent to the Spanish Main "served to increase fraud" (p. 340). Two of the contributors seem to differ in their estimates of Governor Belcher (*cf.* pp. 389 and 417). While peers cannot vote for members of the House of Commons (p. 435) it should be borne in mind that this does not apply to Irish peers sitting for an English constituency. The assertion that the overthrow of Andros in 1689 was a protest not against his tyranny or that of James II, "but against the principle of government from a distance" (pp. 617-18) would seem to require proof. It is a question whether it was illogical to admit the power of Parliament "to impose duties on trade—if it had no power to tax" (p. 665). The possibility that George III with proper support from his generals and people might "have succeeded in quelling the rebellion for the time being" is at least a doubtful conjecture (p. 764). Certainly "the *raison d'être* of New England" was not "the assertion of the principle of religious toleration" (p. 797); it was to maintain their own system of religion and government. Finally, it seems very odd to see Jonathan Edwards re-christened "Samuel" (p. 802).

ARTHUR LYON CROSS

UNIVERSITY OF MICHIGAN

Life and Labor in the Old South. By ULRICH BONNELL PHILLIPS. Boston, Little, Brown and Company, 1929.—xix, 375 pp. $4.00.

Southern history has reached the stage where a synthesis is in order. What the younger students in the field have been eagerly awaiting from the two or three "old masters" is a weighing of values, a sifting of conflicting opinions and, perhaps, even the pronouncement of a few final judgments. The title *Life and Labor in the Old South* over the name of Ulrich B. Phillips created more than one thrill of eager expectation. A close reading of the volume brings a realization of distinct achievement mingled with a faint sense of disappointment. Dr. Phillips has given us by far the best general book yet written on the South; he has not given the long expected synthesis. In fact, by his very method he seems to question whether such a thing can be done.

The approach in this work is distinctly economic. The main interest is ever in the plantation and the human values which it created. Fishing, lumbering, ship-building, manufacturing, making turpentine, writing books and the countless efforts of the professional classes are passed by, and the planter and his staples are kept

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

at the center. The two centuries of colonial life in which old-world patterns both of thought and of institution were adjusted to the American wilderness are dealt with in a few preliminary chapters, while the common folk, who always greatly outnumbered those who lived with slaves and stables, are given space in accordance with their importance to plantation economy. A second volume is promised which will probably right the balance, but the approach adopted implies a clear-cut understanding of just when "The South" began and just what constituted it that some will question.

The method of presentation is rather unusual. The book abounds in quotations, and men and documents are allowed to speak so much for themselves that the impression is often that of a number of detailed snapshots skillfully arranged. One finds the Carters, the Seldens, the Bollings, etc., but sometimes misses Ulrich B. Phillips, who knows more about the Old South than all of these and is just as interesting. Furthermore, the absence of complete materials for all parts and periods of so varied a field necessitates the bringing together of units widely separated in time and place, and the producing in effect of the very generalizations which the author has evidently striven so hard to avoid.

The main contribution of the work is found in the fresh materials here presented. Countless documents and sets of documents, analyzed and set forth in condensed form, create again the everyday life of the Old South. Family papers, plantation records and rare agricultural journals have been searched; no other work in this field offers so many gems of this kind. And amid such detail the larger facts are not lost. The weather, never a half-way thing in the South, is always in the background; the rural isolation of planter, family and laborer is ever evident; the humanness of overseer and negro rises above the accidents of station; and the hopes and fears of those who live by great staple crops can be felt in every situation.

The work is thoroughly objective at all times. Not only are men allowed to speak for themselves but all parties are given a fair and equal hearing. In regard to miscegenation and the treatment of slaves, both the pleasant aspects and the side too often hidden are told without hedging. There is sympathy, but no pleading, for a life that has passed.

A few general conclusions are offered. No doubt is left as to the lack of noble blood in Virginia's first families; it is quite as plain that the negro was not unhappy in thraldom; and, implied in the whole attitude of the book if not openly expressed, is the contention

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that each situation and each human relationship in Southern life must be judged on its own individual merits. Perhaps, after all, that is the answer to those who demand a synthesis. Description is sounder than interpretation!

Taken all in all, this volume is a work of solid scholarship and widest understanding. It will serve the student almost as a source book, and will at the same time delight the general reader by its style and information. It well merits the prize offered by its publishers for the best book submitted in the field of American history during the year 1928.

AVERY CRAVEN

UNIVERSITY OF CHICAGO

A Panorama of the World's Legal Systems. By JOHN HENRY WIGMORE. St. Paul, West Publishing Company, 1928.—3 vols. xxxi, xv, xiv, 1206 pp. $25.00.

The announcement of any book by a writer with the profound insight, the patient scholarship, the capacity for analysis and synthesis of the author of "Wigmore on Evidence" would be an event. When the book announced is a compendium of comparative law and one recalls that the author adds to his other qualifications a superlative linguistic equipment, an experience as an Orientalist and a notable record in research, then the event indeed becomes one of prime importance. Dean Wigmore has only his brilliant past to blame if his achievement is tested by the expectations engendered by his reputation.

The stated purpose of the three volumes is to trace the evolution of various legal systems in their relation to one another in chronology and causes. The author names this "Comparative Nomogenetics" as distinguished from "Comparative Nomoscopy", or the account of the mere facts about the different systems, and "Comparative Nomothetics", or the analysis and statement of the relative merits of legal institutions in different systems. These terms, already used by Dean Wigmore in his famous case books on Torts, are fitting companions for "autoptic proference" and other neological love children (see Powell, J., in *Morse v. State*, 10 Ga. App. 61, 72 S. E. 534) which the learned author has raised to respectability, if not to popularity, by recognition in his *Treatise on Evidence* and elsewhere. They are formidable words for the average reader, the state of the study of the Greek language being what it is.

Sixteen legal systems, past and present—Egyptian, Mesopotamian,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Hebrew, Chinese, Hindu, Greek, Roman, Japanese, Mohammedan, Keltic, Slavic, Germanic, Maritime, Ecclesiastical, Romanesque and Anglican—are described in brief, entertaining sketches, enlivened by maps, translations of actual legal documents and illustrations. The composition is generally based on secondary sources. The illustrations in black and white, and color, present the edifices in which law was administered (whether temples, palaces, tents, courthouses or city gates), the principal men of law (whether kings, priests, legislators, judges, jurists or advocates), and the chief types of legal records (whether codes, statutes, deeds, contracts, treatises or judicial decisions). Footnotes are omitted but to each chapter is appended a list of the sources of illustrations and documents and a bibliography.

Dean Wigmore has not attempted to write a treatise for the specialist or the advanced student. He is rather an affable, well-read guide helping the average reader to an acquaintance with the historic significance of the lawyer's profession. The book is meant to be a popular outline and should be criticized as such.

The merits of the volume as a popular compendium are numerous. To praise the admirable chapter on Greek law or to emphasize the timely quality of the account of Chinese ideology is to slight other divisions of the work equally fascinating and illuminating. The style is readable, the maps are well-chosen and helpful, the illustrations (nearly 500 in all) often are genuinely enlightening; the appearance of the work is attractive. The text with all its expository excellence seems needlessly uncritical at times. The dubious authority of much that passes for the history of the ancient world might have been more emphatically emphasized. One might quote to the author Gertrude Bell's remark about the Tower of Babel: "In the first place there wasn't one and in the second, the one there wasn't, wasn't at that point." Not that Dean Wigmore actually locates that interesting building. The author's references to the doings of Moses and other Biblical characters are amusingly tender of the sensibilities of Fundamentalists. Cecil B. DeMille might have collaborated in the choice of some of the color plates, several of which are badly printed and one of which is upside down. The ideal pictures of "Moses Breaking the Tablets of the Law", "Jesus in the Temple with the Doctors of Law" and "A Mountain Kelt of Scotland" seem unnecessary lures to anyone attracted even to an elementary study of comparative law. The interest aroused by the picture of execution by elephant is blunted by successive identical

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

pictures of Colbert (pages 916 and 1025) and by two of the Viking Chieftain on pages 809 and 810. One regrets too that Dean Wigmore ignored recent serious scholarship of Carlos Israels and others dealing with contemporary Russian law and entrusted to the retired Colonel the writing of the account of the Soviet legal system. It is unfair to the Colonel that his composition must be compared in the next volume with the civilian Dean's fascinating chapter on English law and lawyers.

The learned author in an epilogue invites attention to a generalization which he describes as his favorite hypothesis:

> The principal feature that controls the creation or the survival of a legal system is the rise and persistence of a body of technical legal ideas; and this body of legal ideas is itself the result of the existence of a professional class of legal thinkers or practitioners, who created and preserved the body of ideas independently of the identity of the political system and independently of the purity of the race-stock. In short, *the rise and perpetuation of a legal system is dependent on the development and survival of a highly trained professional class.*

This hypothesis is not wholly supported in the author's *Panorama*; certainly not in his account of the Chinese system, and it is doubtful if reservations should not be made in considering the Anglican system, but it is at least, as the author says, a hypothesis worthy of inquiry. One can cordially echo the author's hope that his work may emphasize the scientific importance of studying each of the several legal systems in its corporeal whole, as a preliminary to the study of the evolution of specific legal ideas or institutions, and thus place on a broader basis the science of comparative legal history.

JOHN HANNA

COLUMBIA UNIVERSITY

The American Secretaries of State and Their Diplomacy. Volume VI. Edited by SAMUEL FLAGG BEMIS. New York, Alfred A. Knopf, Inc., 1928.—x, 457 pp. $4.00.

The present volume covers a period, March 7, 1849, to March 4, 1861, when foreign problems were less important than domestic. Men great or near great—Clayton, Webster, Everett, Marcy, Cass and Black—headed the department of state, but domestic slavery overshadowed every foreign issue of the time. The secretaries have been fortunate in their biographers. Dr. Mary Wilhelmine Williams speaks authoritatively of Clayton, remarking that, "Though not above using equivocal methods to gain personal or political ends,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

he was perhaps as honourable as most of his contemporaries in public life." The Clayton-Bulwer Treaty naturally looms largest in the story. Its chief weakness is ascribed to the ambiguity of the first article, on the interpretation of which Clayton was consulted even after Taylor's death, when his own term had expired.

Professor Clyde Augustus Duniway dwells in pleasing literary style on the closing scene of Webster's public services. The withering blast at Hülsemann was essentially a domestic pronunciamento in harmony with Webster's dominating nationalism. It is happily contrasted with his conciliatory note to Calderón regretting mob violence attendant on the Lopez filibuster. Central American difficulties are set forth with detail. The whole is enlivened by human sympathy for a great man wending his somewhat disappointed way toward the tomb.

The four months' incumbency of Edward Everett found its climax in America's refusal to enter a tripartite agreement with Great Britain and France to guarantee Spain in the permanent possession of Cuba. Everett asserted that "Amongst the oldest traditions of the Federal Government is an aversion to political alliances with European powers", supporting his position by quotations from both Washington and Jefferson. The author, Foster Stearns, comments pertinently on Everett's halfway point between the "Farewell Address" and the League of Nations in his assertion of America's traditional isolation. "The principles involved in the Cuban letter were not new;" the author says, "but his expression of them was such as to win the adherence of the American people, and to make a restatement of them unnecessary for nearly half a century."

The most elaborate sketch is that of William Learned Marcy, whose conduct of the state department was exceptionally varied in its contacts and not unfruitful in results. Dr. H. Barrett Learned puts Pierce's secretary in strong light. Once in office Marcy made some appointments of distinction, and introduced a better system of salaries and grades. Negotiations with Spain included the Black Warrior affair and the Ostend Manifesto. Nowhere else will one find a more meticulous treatment of these issues, unpublished manuscripts here correcting in some cases the impression set by published documents. There is a full-length portrait, too, of the maladroit Soulé. Central America, still a problem, was largely in Buchanan's hands as minister at London. Offsetting failure here was Marcy's personal success in exposing Crampton's violations of American neutrality in the Crimean War, and his firmness in dismissing the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

offending minister. The dress circular of Marcy is represented as much less drastic than commonly supposed, considerable discretion being still allowed the ministers. Minor mention is accorded the Koszta Case, the Gadsden Treaty, Canadian reciprocity, the case of Patrice Dillon, the Declaration of Paris, and the successful outcome of the Danish Sound Dues. From it all emerges Marcy, not quite a brilliant but certainly a solid figure.

Personally the reviewer is gratified to find in the sketch of Lewis Cass a note of admiration for Buchanan. The author, Lewis Einstein, himself a diplomat, finds in Buchanan even more than in most presidents a determination and an ability to be his own secretary. Cass was essentially a figurehead, very dignified, indeed, but little more. Settlement of the Central American imbroglio insured a new cordiality with Great Britain. In Mexico, the president, had he possessed Congressional support, would have forestalled the menace of impending European intervention. Issues to the southward were thoroughly confused. Toward the filibustering Walker, the president and secretary played a somewhat disingenuous rôle. Far Eastern diplomacy was successful, but inglorious. Approaching civil war led to Cass' resignation in what the author calls "the last flicker of greatness in a gallant patriot."

Foreign affairs being now wholly subordinated to domestic, the sketch by Dr. Roy F. Nichols of Jeremiah Sullivan Black, who filled out Cass' unexpired term, December 17, 1860, to March 4, 1861, is of interest solely for the life of the incumbent, here compactly summarized.

Notes and bibliographies, the scholar's apparatus, are adequate throughout, but unobtrusive. The volume is fully representative of the series.

LOUIS MARTIN SEARS

PURDUE UNIVERSITY

A Selection of Cases and Other Readings on the Law of Nations. By EDWIN DEWITT DICKINSON. New York, McGraw-Hill Book Company, 1929.—xxii, 1133 pp. $6.00.

This book is a fulfillment of the promise contained in the three-volume mimeographed edition which appeared in 1927. The mimeographed edition was an excellent case book; the present volume is even better. It includes four new chapters: "Jurisdiction of Crime and the Extradition of Fugitives in the Law of Nations"; "Pro-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tection of the Interests of Foreign States in the Law of Nations"; "Succession in the Law of Nations"; and "Treaties in the Law of Nations". These are the last four chapters in the book. The first selections deal with the definitions, sources and authority of international law and its relation to municipal law. Chapter ii, under the title "Persons in the Law of Nations", includes recognition, *de facto* governments and other matters. A third chapter is well devoted to Nationality; a fourth to Territorial Authority, of which territorial "jurisdiction" is properly made a sub-section. The fifth chapter groups materials on Authority on the Seas and the sixth treats of "Jurisdictional Immunities". The book as a whole covers most of the "law of peace", but the "law of war" is not included.

As the author frankly states in his preface, this "volume includes much public international law, a good deal of private international law, some constitutional law, and a substantial selection from the municipal law which is applied by courts in various cases affecting international relations." The subtitle — "Chiefly as it is Interpreted and Applied by British and American Courts"—testifies to the author's constant attention to accuracy, but as a matter of fact the book contains more material drawn from other than Anglo-American sources than has been usual with international law case books in the past.

It is distinctly the case book of one who teaches international law in a law school, but the fact that it is a selection of both "cases" and "other readings" makes it more readily adaptable to the course in a political science faculty or in a college. Professor Dickinson has himself said that a case book must always be a very personal thing. Probably many teachers will choose to omit some material that Professor Dickinson has included. Some will also wish to vary the order in which the material is presented. The reviewer, for example, finds it more helpful to pass from the section on Recognition to that on International Persons De Facto, returning later to the intervening sections on Legal Capacity and limitations thereon. But these are matters of individual choice, not of criticism. There are probably few subjects included in the curricula of our colleges, law schools and universities which are taught with such a variety of emphasis and of scope and plan as international law.

It is thus evident that no one can subject a case book to the test of some objective standard. It is perhaps permissible to indicate some general aspects regarding matters common to all such selections.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

One of the most important things about this case book is its use of recent materials, such as the judgments and opinions of the Permanent Court of International Justice, the decisions of claims commissions, statutes, treaty texts, etc. The footnotes are not overweighted with the traditional long lists of references to standard treatises; sufficient indication is given to lead to authoritative discussions and these are supplemented by the most recent comments in current literature.

For some courses it would no doubt be useful if the footnotes contained a little more of the author's own views and summaries of facts. As an example, one might welcome as a footnote to the case of *Mortensen v. Peters* a brief statement of those subsequent events in Parliament, the Foreign Office and in international conferences which add so much to the effectiveness of that illustration of the "Nature and Authority of the Law of Nations". More facts might also have been stated regarding the British Dominions, despite the rapid changes in their interesting status. But the compiler of a case book cannot be expected to write a general treatise through his footnotes. It might also be suggested as a personal opinion that in a number of instances diplomatic notes might have well replaced quotations from text-writers.

PHILIP C. JESSUP

The Grain Trade during the World War. By FRANK M. SURFACE. New York, The Macmillan Company, 1928.—xxviii, 679 pp. $6.00.

British Food Control. By SIR WILLIAM H. BEVERIDGE. New Haven, Yale University Press, 1928.—xx, 447 pp. $4.00.

These two important volumes give us further fragments of the story of economic control and administration during the World War. Each is from the pen of a distinguished participant in the experiment about which he is writing. Each, moreover, is based upon inside documentary materials, the interpretation of which is as objective as could be desired.

Mr. Surface, who served as economist for the United States Grain Corporation, records carefully and fully the evolution of American governmental control over grains and cereals for the purpose of stimulating the production of an adequate supply both to the home consumer and to our Allies abroad. It is, as he suggests, "the story of a gigantic organization, based on sound commercial principles, which, during the thirty-three months of its active existence,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

handled a total commodity turnover, including the value of both purchases and sales, in excess of $7,500,000,000" (p. vi). The fixing of the price of wheat by the Fair Price Committee, headed by Dr. Harry Garfield, is related in detail; and in the light of the charges hurled at Mr. Hoover in the recent presidential campaign, it will be of interest to note that the author reproduces a letter from President Wilson, of which the concluding paragraph is as follows: "Mr. Hoover, at his express wish, has taken no part in the deliberations of the Committee on whose recommendation I determine the Government's fair price, nor has he in any way intimated an opinion regarding that price" (p. 71). Later chapters deal exhaustively with the control of flour milling and the export trade, the inter-Allied wheat program and purchases in the latter part of the War, transportation problems, farm marketing, the enforcement of licenses, European relief operations, and the liquidation of the Grain Corporation. Over 150 pages of appendices present a mine of statistical data and documentary information on the methods and procedure used by the organization.

As permanent secretary to the ministry of food during Lord Rhondda's headship of it, Sir William Beveridge was in the thick of the development of British governmental control over food supplies, prices and distribution. His account, while no better documented than Mr. Surface's discussion of grain control in America, has in it more human warmth. The reader feels that he is moving along the corridors of a great social venture with a man whose constructive imagination and good sense helped to make much of it successful. The British problem was, of course, more urgent than the American. Even though there was at no time any serious food shortage in Britain, profiteering became rife and prices skyrocketed prior to government regulation. This regulation developed slowly, empirically, under three different ministers—Mr. Walter Runciman, Lord Devonport and Lord Rhondda. But it was the last whose great administrative insight put the gigantic scheme of price regulation and rationing into successful practical operation. By the middle of 1918 over ninety per cent of all that the British population ate and drank was under the jurisdiction of the food ministry. Its methods were so admirably designed to cause a minimum of inconvenience to the public that Lord Rhondda won for himself the reputation of being "the only popular food controller in Europe" (p. 79). Rationing as worked out under his guidance enabled the British people to eat, on the average, somewhat better during the War than

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in the years immediately preceding it. Prices, says Sir William Beveridge, were not as low as competitive prices in a period of plenty, but they were decidedly less than what they would have been without governmental regulation.

What particularly struck the reviewer as he pondered the social significance of these two books was (1) the similarity in administrative methods used in both countries and (2) the conclusion of each author that while the experiment he was recounting was a feasible intervention into economic law for a war-time emergency, it was not suited to normal times when food is plentiful. Voluntary coöperation rather than coercion; centralized direction with decentralized execution; a rational blending of laymen and experts—these seem to have been the secrets of the success of Mr. Hoover's and Lord Rhondda's food administrations. As far as possible, existing channels and agencies of trade were used in each case. In the United States there were zone offices, with state and local food administrators under them; in Britain, 2,000 local food committees applied the plan of distribution worked out in Whitehall. The good will of millers and farmers—at any rate for the most part—was gained by Mr. Hoover's organization through its skilful coördination of existing distributive agencies, while the British ministry of food discovered it could obtain best results by utilizing local retailers as the instruments through which to ration foodstuffs to the people. The American grain organization, however, depended more upon voluntary service than did the British food organization. The latter was run mainly by civil servants as advised by a Consumers' Council upon which labor was strongly represented. It was Lord Rhondda's policy, and that of his successor, Mr. Clynes (who took office after Lord Rhondda's untimely death in July, 1918), to "trust subordinates", so that minor decisions need not have to be referred to London. How differently the French operated their "centralized" scheme of feeding the civilian population!

In the reviewer's opinion, the story of the American grain trade and of British food control merits the thoughtful study of all those who are concerned with the development of an effective technique for the handling of social and economic services by governmental agencies. They will find especially illuminating the keen observations of Sir William on incentives in the public service, as well as on what civil servants and business men may learn from each other.

WALTER R. SHARP

UNIVERSITY OF WISCONSIN

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

BOOK NOTES

A recent book — *L'Origine du droit et de l'obligation sociale* (Paris, Marcel Rivière, 1929; xv, 227 pp. 25 francs)—by Paul Velay raises the most fundamental questions any juristic or political theorist can discuss, i. e. questions concerning the origin, definition, and end of law as a means, or the means, of social control; its relation to morality; and the limits of obedience due authorities claiming to promulgate it. Although the author regards his answers as a great new light, they do not differ essentially from the conclusions already reached by Duguit. Velay reduces all true law ultimately to the principle of social obligation, or social solidarity. This principle, upon which he bases the right to live, with its attendant social rights and duties like that of private property, forms a great, common, inescapable, objective, equilibrating necessity. Every society acting in accordance with this objective law, recognizing no rights without corresponding social duties, will increase in population and flourish. Indeed the increase in numbers becomes the most tangible evidence of conformity of such a society to this basic principle. If a society acts contrary to the law, by waging war, for example, it sooner or later perishes, because law, by definition, is that adjustment in society which makes survival possible. All attempts (such as theories of natural law) to reduce law to subjective principles, to a communal or individual sense of right, to religious or moral grounds are meaningless and false. Law is an objective, external, mechanical or organic adjustment of human relations, imposed entirely independently of any subjective will or consciousness. Objective law comes first, subjective morality later, although the latter may eventually reinforce the feeling of respect for law. Equality (in the sense that he with greater rights must assume greater social obligations) is a necessary corollary of objective law, regardless of morality's verdict in the matter. In short, Velay rigorously separates law and morality. Like Duguit, he rejects both "natural rights" and absolute sovereignty as products of a false, subjective theory of law, and emphasizes functional syndicalism and international coöperation and control as the best modern institutional embodiments of objective law. The theory is open to the same fundamental criticism as Duguit's. Any attempt to separate rigidly

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

law and morality, in discussions on the nature and origin of law, is doomed to failure at the outset and the proponents of such a thesis may be charged with being unrealistic, the same offense of which they convict their opponents. The so-called law of objective solidarity becomes a subjective figment of the theorist's imagination, whereas the true historical and "objective" theory takes account of the *subjective communal sense of right* as the only adequate basis and actually effective sanction for social rights and duties. A "natural law with variable content" has existed historically as the true foundation of society. Nor do adherents of a subjective view of law necessarily accept Austinian sovereignty or the absolutism of government as Velay seems to suppose. The mention of such names as St. Thomas Aquinas and Professor Krabbe should suffice in this connection.—MAX A. SHEPARD, Harvard University.

The methods of fiction carried over into history are a familiar sign of the new biography. Now, as if to relieve the usual monotony of the textbook, a similar blending of ideals is effected in Cyril E. Robinson's *England: A History of British Progress from the Early Ages to the Present Day* (New York, Thomas Y. Crowell Company, 1928; xiv, 892 pp. $5.00). Under this spacious title a master of Winchester College, distinguished by a broad cultural background rather than by critical training, and animated by sentiments romantic, patriotic and protestant, has essayed a vivacious narrative of all the traditional movements of war and peace. With a lively sense of action, the author devotes many pages to warfare; and on the treatment of the earliest as on that of the latest of England's wars, critics and revisionists have evidently made no impression. Naturally a whole chapter is given to the Battle of Hastings, including after the manner of Freeman the doubtful palisade; and with some digression another to Chivalry and the Crusades. With stress upon Germanic origins, the Anglo-Saxons become the chosen people—"make no mistake about it"—who after they have planted not only ideals of liberty, but feudal tenures, vassalage, and even a royal exchequer, leave little for the Norman Conquest to accomplish beyond usurpation and confiscation. So light and fluent a pen easily runs to exaggeration, as when the ordeal of hot water is intensified to that of boiling oil, and the king's touch the more miraculously cures leprosy instead of scrofula. Trial by jury, an innovation as we are told of Henry II, is not ordinarily a colorful subject, but when it transpires that judges give verdicts and juries pass sentence, there is more than a touch of unconscious humor. Likewise the House of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Commons, which is drolly depicted as consisting of lusty burghers and tradesmen, in the absence of knights and squires loses half its strength; and as to the Cabinet, the idea of its being restricted to commoners without any lords will cause amazement even in the minds of the Labour Party. After this it does not matter that the Congress of Vienna is fancied as an actual assemblage, or that Canning is figured as facing the Powers with an ultimatum over America, although in either case the truth is stranger than the fiction. Finally, the unusual amount of a hundred pages given to tables, bibliography and other aids will quicken the critical powers of the student, who no longer believes that the textbook is always right. The American edition, which reasonably reduces the original four to a single volume, is in point of typography as good as most reprints, while the photo-plates made in England are excellent.—J. F. BALDWIN, Vassar College.

A recent addition to the American Social Science Series, *The Range of Social Theory* (New York, Henry Holt and Company, 1929; x, 587 pp. $3.60) by Floyd N. House, renders a useful service. There is need for a work which will adequately survey and interpret the tentatives of sociological thinking from Spencer to the present. It is a difficult task and it is only in part accomplished in Professor House's volume. But this is a distinct improvement on anything at present in the field. It is judicious and broadminded, and the treatment is more catholic, more sympathetic and understanding than that of the only work in English which at present competes with it, Sorokin's *Contemporary Sociological Theories*. We could wish that the analyses were sometimes more critical and more keen, that occasionally unimportant restatements of obvious truths were not hailed as discoveries, and we could dispense with some of the later chapters dealing with economic and political theories which are more adequately dealt with in books devoted to these subjects. The chapters vary considerably in quality — we might contrast the excellent chapters on "Theories of Population" and on "Religion and Morals" with such a threadbare chapter as that on "Social Movements". There are serious omissions in the survey, particularly the failure to give any account of the writings on social evolution. There is only one passing mention of so prominent a sociologist as Pareto, while some unimportant authors are extensively quoted. But a single volume dealing with so wide a field is bound to raise questions of selection and of proportion, and we can be grateful for what Professor House has given us. Natur-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ally he is more satisfactory in those parts where his own interest is most direct, the first two divisions of the work, and especially the second, entitled "Human Nature and Collective Behavior", being distinctly superior to the third and fourth. The account of the various movements and doctrines is always lucid and sensible, and the author happily does not confine his interest to the writings of professional sociologists, who on many subjects of social significance are often more dull and less illuminating than the social essayists and novelists.—R. M. MACIVER.

A novel experiment is being undertaken by Alfred A. Knopf in publishing a series of studies of famous American trials, thereby aiming to give a picture at first hand of the development of American jurisprudence and constitutional law. *The Milligan Case* (New York, Alfred A. Knopf, Inc., 1929; viii, 476 pp. $5.00) edited by Samuel Klaus assisted by Underhill Moore and James N. Rosenberg, is a study of some considerable interest to students of political science. Dealing as it does with the constitutionality of military trials in times of stress, yet when the court systems are still available, it emphasizes the power of the judiciary as a bulwark of protection for individual rights. The gist of the doctrine of the Milligan Case as interpreted by the editors is that the Constitution is at all times the supreme law of the land and the suspension of its provisions in war or in peace can rightly occur only by virtue of express limitation set forth in it; and that neither Congress nor the president may under the Constitution suspend the operation of civil courts nor the ordinary procedure of grand jury presentment and trial. An excellent introduction by the editor gives the necessary background and a succinct analysis and comment on the case. The body of the book is devoted to the records, arguments and the opinions of the court. More than one-third of the book is devoted to the appendices, the first covering the proceedings of the military commission which sentenced Milligan and the second a habeas corpus petition *ex parte* Merryman. A short bibliography is included but no index.—GRAHAM H. STUART, Stanford University.

The first two volumes of the French edition of Stubbs' *Constitutional History of England*, published before the War, contain valuable supplementary studies by the editor, M. Petit-Dutaillis, which did much to bring Stubbs up to date by presenting results of recent historical scholarship. These studies presently appeared in English translation in the Publications of the University of Manchester and are well known to students of medieval English constitutional his-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tory. The third volume of the French edition, long delayed by the War and the preoccupations of the editor, came out in 1927, with an introduction by M. Petit-Dutaillis and a series of additional essays by M. Georges Lefebvre. Unlike the earlier studies, these have little relation to the subject-matter of the volume in which they appear. The third volume of the Constitutional History has to do with the fifteenth century, but the contributions of MM. Petit-Dutaillis and Lefebvre relate almost wholly to the thirteenth and fourteenth centuries. They are none the less useful, however, and their publication in English as *Studies and Notes supplementary to Stubbs' Constitutional History, III*, translated by M. I. E. Robertson and R. F. Treharne (Manchester University Press, 1929; pp. ix, 305-517. 9s.), should be distinctly serviceable to English and American students. In the introduction M. Petit-Dutaillis discusses parliamentary origins and more particularly the Lenten Parliament of 1305. In addition to Maitland's trail-blazing work on the records of that assembly he has made use of other historical writings which put early English parliaments in a very different light from that in which Stubbs viewed them. He agrees with the late Professor Tout that Edward I, "far from having been the founder of the free constitution of England, had not, any more than Philip the Fair, any conscious intention of sharing his power with the people." M. Lefebvre's studies treat of the transformations of the Curia Regis, the institutions of the King's Household, the Council and origins of the House of Lords and the origins of the House of Commons, and summarize admirably the results of the researches on these subjects that have been carried on since Stubbs wrote.—R. L. SCHUYLER.

Fourteen Years of European Investments: 1914-1928 (New York, The Bankers Publishing Company, 1929; xiv, 279 pp. $5.00), by S. Stern, is an interesting study of the results which would have been obtained by making investments in 1914 divided equally between the United States, Canada and each of thirteen European countries, as compared with the results of a similar total investment in the United States alone. Despite the unprecedented war-time and post-war upheavals, by 1928 the investor in any one of seven of the fourteen other countries would have secured larger capital and income gains from geographically diversified investment than if he had invested in the United States alone; in seven others he would have sustained a loss; in one he would simply have maintained his principal intact. Mr. Stern concludes that since these comparatively favorable results were secured even in the face of the extraordinary financial and polit-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ical disturbances witnessed from 1914 to 1924, the desirability of a geographical diversification of investments, as a form of insurance against economic and political stress and against currency depreciation, is clearly established. It should be pointed out, however, that he takes no account of the effect of the general rise in prices since 1914 in reducing the *real* value of all fixed obligations. The book also presents detailed data by countries, and a summary of legislation and public policy with respect to the protection of the rights of foreign security holders.—JAMES W. ANGELL, Columbia University.

The final restoration of currency stability in the leading European countries has naturally been followed by many investigations into what actually happened during the preceding period of depreciation, and why it happened. Of these investigations, one of the best that has thus far appeared is Miss Eleanor Lansing Dulles' study of *The French Franc: 1914-1928* (New York, The Macmillan Company, 1929; xxxvi, 570 pp. $6.50). The book is a happy combination of historical narrative and well oriented economic analysis, and its strong yet easy style makes it a pleasure to read. With respect to the causes of the depreciation of the franc after the War, Miss Dulles concludes that the main underlying reason was the severe and continued pressure on the French budget, in the absence of adequate reparations receipts from Germany, for money to finance reconstruction. From this budgetary pressure followed excessive internal borrowing, inflation, and all the familiar attendant evils thereof. In the more immediate sense, specific upward or downward movements in the general progress of the depreciation were explainable by the rise or decline of general confidence, both at home and abroad, in the French economic and political situation at large; that is, by speculation in the broadest sense. No narrowly conceived and essentially "mechanical" explanation running in purely economic terms, such as the working of the quantity thory of money, the level of the purchasing power parities relative to prevailing exchange rates, or the effect of changes in the commodity balance of trade, is adequate (even when applicable) to account for what happened. Similarly the final achievement of monetary stability was due less to carefully wrought plans and policies than to the general intelligence and energy of the French nation: the recovery was again a matter of political conviction and popular psychology rather than of specific economic mechanisms. It follows, incidentally, that stabilization below the old par could not be effectively achieved until the mass of the people was ready to accept the explicit sacrifices and losses entailed; which

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

explains in considerable part why the stabilization was so long delayed. With these conclusions the present reviewer can only express his agreement, and his admiration for the skill with which they are developed. It will be interesting to compare them with the completed results of the much more elaborate series of coöperative investigations directed by Professor Carlton J. H. Hayes, under the general caption of *Social and Economic Studies of Post-War France,* a part of which are still to be published. Presumably the two will complement one another, rather than show any major disagreement. —JAMES W. ANGELL, Columbia University.

The International Publishers have issued in English translation Volume XX of the thirty-volume authorized edition of Lenin's works. It takes the form of two volumes, under the title *The Revolution of 1917* (New York, International Publishers, 1929; 2 vols., 381, 428 pp. $4.00 each) translated by Joshua Kunitz and M. J. Olgin, and edited by Alexander Trachtenberg. Granted the piety and historical interest which actuate the Lenin Institute in Moscow to rescue and record all the extant utterances of the great revolutionary and thereby give relative permanence to a great deal of fugitive material, it must be said at once that the editorial procedure is admirable and as lavish in its apparatus as the scale of the work itself. The volumes under review cover the period from the outbreak of the March revolution to the July days when conflict with the provisional government drove Lenin into hiding. The speeches and writings are fortified with: (1) eight well-chosen facsimile illustrations, (2) Lenin's own notes, (3) short, crisp notes by the Institute editors, supplemented, where necessary, for English readers, (4) notes on the lost writings, (5) alphabetic biographical notes of great convenience, (6) about forty pages in small type of related documents, (7) bibliographical notes, (8) calendars of events in the Revolution and in the life of Lenin during the period treated. So far as comprehensiveness in method can effect it the complete Lenin of speech and pen is portrayed in this series. The period under review was one of the three or four most exciting in Lenin's career. The news in Zurich, the instant decision that *the* Revolution was under way, the passage through Germany arranged for by that interesting but half-forgotten person, Fritz Platten, the suspicion and the baiting with which the "emigrants" were received, and the swift rise to premature revolution within the Revolution, form a feverish tale. It is hard, even when one has become initiated in the dialect and dialectic of the man and the times, to see the wood for the trees, but

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

one can grasp some of Lenin's personality and, with the help of the *apparatus criticus,* make one's way through the almost daily crises of the struggle to make the Revolution accommodate Bolshevism, and, later, to subject the Revolution to it. No one could have been so vigorous and lusty a fighter under the most adverse circumstances, or so infectious a demagogue as Lenin revealed himself to be, without behind him a lifetime of revolutionary thinking which had gradually distilled and redistilled a creed until it became second nature. It is probably legitimate to think of Lenin, like Cromwell, as an amazing opportunist, yet one must qualify that short cut of generalization by insistence that both men kept their opportunism subordinate to their zealously preserved main objectives. As one reads these speeches and articles, even those in fragmentary form, it is impossible not to admire, along with the mental and verbal dexterity, the persistent fashion in which every victory won or point made was reconciled with the Leninist creed and recruited to the Bolshevik program. The prejudiced members of any of the several schools of opinion as to Lenin can find abundant corroboration for their views in this material, but at any rate everything is there, and very few references to it can be made without reward in information or interest. It is particularly interesting to notice how there recurs in many variations, but with no lack of seriousness, the refrain of the peasant problem, which was, after all, the chief source of disagreement between Bolsheviks and Mensheviks. These volumes alone would effectively invalidate the common assertion that the supreme folly of the Bolsheviks was an ignorance of Russia which made them optimistic about introducing the doctrines of Marx to a peasant country.—J. Bartlet Brebner, Columbia University.

Dr. M. J. Bau already has to his credit a number of volumes dealing with the international relations of China; in *China and World Peace* (New York, Fleming H. Revell Company, 1928; 194 pp. $2.00), he undertakes to advance the cause of world peace by pointing out a way for the readjustment of China's foreign relations with a view to hastening her entrance on a footing of full equality into the family of nations. Taken as a whole, the book fails to fulfill the expectations aroused by the author's introductory statement of purpose. Dedicated "to the Chinese martyrs who gave their lives for the cause of China's freedom and salvation", it devotes most of its space to the history of China's past humiliations, to the rise of nationalism, and to the righteousness of present-day nationalist aspirations. For constructive suggestions, the author contents him-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

self with setting forth briefly certain new arrangements which would —perhaps—satisfy the demands of nationalist China. After reviewing the history of China's tariff commitments, he recommends (p. 86) that China "should immediately formulate a National Tariff Law, scientifically adapted to the best interests of her own industries and yet giving rise to the least friction with the Powers, and, what is more, moderate in rate, definite in schedule, and non-discriminatory in character." His proposals for the abolition of extraterritoriality (p. 103) are more definite: 1. The complete relinquishment of extraterritoriality should be stipulated in a new treaty between China and the powers concerned, separately or collectively. 2. By an exchange of notes between China and the powers, a transitional system (of which Dr. Bau gives a brief outline) for the trial of foreigners should be established. 3. The Chinese government, by a unilateral declaration, should guarantee: (a) arrest by judicial warrant only, except in cases of *flagrantis delicti,* (b) the application of the writ of habeas corpus, and (c) publicity of trials. At the close of the chapter on "Concessions and Settlements" the author suggests (pp. 116-20) two alternative plans for dealing with the Shanghai International Settlement, each plan providing for a "mixed" governing body in which the Chinese members—immediately or eventually—will be in the majority. An appendix of sixty-six pages contains a number of pertinent documents, three of which are also printed *in extenso* in the body of the text; this repetition, which may be of convenience to the reader, would have been unnecessary if the book had been provided with an index.—G. NYE STEIGER, Western Reserve University.

A thorough and valuable discussion of the intricate subject of reparations transfers is to be found in *Transfert des Réparations et le Plan Dawes* (Lausanne, Librairie Payot et Cie., 1928; 124 pp.) by Harry D. Gideonse. Professor Gideonse has delved deeply into the French, German and English literature on the subject and has produced an extremely useful survey of the numerous theories regarding the transfer problem. Most of these theories he regards with a critical eye, for they have been developed to support the special beliefs of their authors or to justify nationalistic points of view. At one extreme are the publications of Professor Liefmann who regards as almost traitorous all German writers who consider the favorable functioning of the Dawes Plan to be a possibility. At the other extreme is the former accountant general of reparations, G. P. Auld, who describes as "defeatist doctrine" any skeptical

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

analysis of the chief principles underlying the mechanism of the Dawes Plan. The author finds in the transfer problems of the past, and particularly in the payment of the indemnity to Germany following the War of 1870, some interesting lessons concerning international payments. Much of the French indemnity was paid to Germany by means of foreign loans and the sale of foreign securities held by French citizens. Although the reparation payments of today are on a much greater scale than those following 1870, there is a certain similarity between the two cases in the fact that the present foreign loans contracted by Germany have likewise made possible the purchase of foreign exchange for the transfer of reparations. These loans, however, while they have made payments easier, are able only temporarily to disguise the situation and to postpone the inevitable consequences. Eventually it will be solely through an economic surplus created by the industry of the German people that the transfers can be made. The author points out that reparations and the international debts are interdependent matters. They constitute one series of payments in which Germany is the source and the United States the ultimate recipient. Great Britain, France, Italy and Belgium occupy merely intermediate positions. For this reason any commercial treaties between the allied powers tending to favor German exports will be unavailing if the United States does not participate, for it is the United States which must in the last analysis receive the greater part of the reparations payments. In conclusion, the author predicts that the financial arrangements centering around the Dawes Plan must in due time undergo prudent modifications or otherwise the nations concerned will be confronted with an economic and political catastrophe.—BENJAMIN H. WILLIAMS, University of Pittsburgh.

Catholicism and the American Mind, by Winfred Ernest Garrison (Chicago, Willett, Clark and Colby, 1928; 267 pp. $2.50), is the attempt of a non-Catholic to interpret Catholicism to other non-Catholic Americans. Parts of the book are well done. The attitude of the Church toward the Bible is put fairly. And Dr. Garrison is right in emphasizing the supernatural element as being a distinguishing mark of Catholicism. There are some unhappy phrases, but on the whole the description of the Mass seems sympathetic. But parts of the book, to a Catholic, certainly seem unfair. This is particularly true of Dr. Garrison's discussion of the relations between Church and State. He gives disproportionate space to an attempt to show that some Catholics have claimed too much for Lord

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Baltimore's disinterested love of liberty, and for Jefferson's debt to Bellarmine. When he says that the majority of the first Maryland settlers were Protestant, he may be right; but when he concludes that the first General Assemblies were dominantly Protestant, he is probably wrong. For an example of Dr. Garrison's tendency to let rhetoric run away with sober judgment, take this: "As a matter of history, the Roman Catholic Church has always clashed with the State wherever and whenever the government has not been subservient to it." But the American State has not been subservient to the Catholic Church, and in one hundred and fifty years there have been no clashes that anyone need worry about. This is a short period in the history of such an old institution as the Church, but it is certainly embraced in the word "always". Dr. Garrison thinks there are three special areas of conflict between the American State and the Catholic Church —marriage, taxation and education. But much of what Dr. Garrison says about the Catholic Church could be said with equal truth about other groups. In regard to marriage, for instance, there is no real conflict because the State does not *command* what the Church *forbids*, nor the Church *command* what the State *forbids*. The Church holds that marriage would be *valid* between certain individuals where the State forbids marriage. But Protestant churches do the same thing. For example, the Methodist Church North, as I understand it, would recognize as valid in the sight of God a marriage entered into by a white man and an octoroon woman in Texas, although the State makes it invalid. The Catholic Church does not admit as valid certain marriages which the State allows, and in this she has the company of many Protestant churches. Marriages between persons divorced from other spouses merely for incompatibility of temperament would be valid in several states, but they would not be valid for Episcopalians. Part of Dr. Garrison's difficulty comes from a failure to realize that papal documents mean just what they say, and no more. Thus if the proposition "Church and State should be separated" is condemned, the condemnation does not affirm that Church and State should be united in America. All that is affirmed is that *sometime*, *somewhere*, perhaps it would be advisable to have a union of Church and State. On the other hand, it must be remembered that strong groups of Catholics might go farther than a strict interpretation of Catholic principles or papal documents would demand. It is one thing to say that Catholics are not compelled to take a certain viewpoint, and quite another to say that Catholics will not take that viewpoint. In last analysis, however, conflicts will not

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

be caused or prevented so much by papal documents as by the general temper of American Catholics. And Dr. Garrison seems to recognize that the temper of American Catholics does not forecast the precipitation of any conflict.—J. ELLIOT ROSS, State University of Iowa.

A slender brochure affording a contemporary view of American railroads—*Wirtschaftsführung und Finanzwesen bei amerikanischen Eisenbahnen* (Berlin, Verlag der Verkehrswissenschaftlichen Lehrmittelgesellschaft m.b.h. bei der Deutschen Reichsbahn, 1929; vii, 103 pp. RM. 480) embodies the impressions of a competent railroad man, Dr. Ludwig Homberger, a director of the German state railroads. These he gathered in the course of ten weeks' study in this country in 1928. He had previously made a similar investigation in 1927 of railroads in Great Britain, and had thus obtained an excellent background for a comparative study. His special interest lies, not in the technical field, but along the lines of economic management, finance and accounting. While his primary object is the enlightenment of his fellow-countrymen engaged in railroading, his observations—based on first-hand knowledge acquired by personal inspection and from leading American railroad managers, and analyzed from a thoroughly scientific standpoint—are deserving of the attention of American students of transportation. It is, for instance, a bit startling to learn from a German bureaucratic authority that he is, first of all, impressed with the completeness and the intensive character of government regulation of railroads in the United States. He is inclined to give some credence to the view that one result of such regulation has been to impel the more capable minds to prefer other avenues of industrial activity. He lists the outstanding problems of our railroads as consolidation, valuation, depreciation accounting and the growing magnitude of taxation. Despite the burden of the reparations tax borne by the German state railways (660,000,000 Rm. in 1928), their total tax burden was but 2.63 per cent of their invested capital, as compared with 1.98 per cent of the invested capital paid in taxes by American railroads in 1927 (p. 10). In this, as in other statistical comparisons, Dr. Homberger handles his material with skill and discrimination. This appears in his comparison of the operating ratios of American and German railroads, *die Betriebzahl*, where he shows that due allowance for the different methods of computing this index makes the numerical difference almost negligible. Particularly enlightening for a summary comparison of statistical units are the tables in the first chapter, in respect of the relative size of the German and the Ameri-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

can railway plant, and as regards the passenger and freight traffic. In particular is it notable that the German railways, with less than one-fifth of our mileage, carry more passengers annually, although with a smaller total of passenger-miles, than do our own. The German passenger traffic since 1913 has increased almost 25 per cent, while our own in the same period shows a decline of about one-half of one per cent. Their average passenger fares, incidentally, are about 40 per cent of our own, though their ton-mile freight charges are 143 per cent of those in this country, due in part to the fact that our average haul is almost four times that in Germany (526 km. to 148 km.). Dr. Homberger falls into an excusable error in setting forth the average dividend rate upon the capital stock of our railroads, the figures quoted referring only to the average upon *dividend-paying stock*. In 1927, for example, the dividend-yielding stock was about 72 per cent of the total. His comments upon the Interstate Commerce Commission's proposed depreciation accounting, *die Abschreibungsfrage* (pp. 53-57), are of interest; but apart from showing certain difficulties involved, he arrives at no final verdict in the premises. In our railroad management he manifests perhaps greater surprise over the inchoate arrangements for budgeting income and expense, capital requirements and their supply, than over any other point. His comments are deserving of the more attention, from the acquaintance he shows with the advanced practice of the Pennsylvania, the New York Central, and the New Haven in this particular. The study as a whole is packed with material and with frequent penetrating comments which would make a translation extremely serviceable to our American railway officials.—WINTHROP M. DANIELS, Yale University.

"A Handbook for Peaceworkers" is the subtitle of a volume called *Between War and Peace* (New York, The Macmillan Company, 1928; x, 591 pp. $2.50), and written by Florence Brewer Boeckel, the Education Director of the National Council for the Prevention of War. The main theme of the book is pacifism in the sense that pacifism sums up the peace movement as a whole. Replete with quotations from speeches, books, newspapers, magazine articles, letters, songs, courses of study, and so on, it is really a source-book of war and peace, and of the relationship of the individual to war and peace. Part I, the Introduction, is entitled "Focusing the Demand for Peace". Here Miss Boeckel maintains that governments rather than human nature are responsible for war, and that therefore, since governmental policies can be changed, war need no longer

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

be considered inevitable. But in order that governmental policies may be changed, it is necessary that there be an intelligent and articulate public opinion determined upon the maintenance of peace. Part II deals with "Materials of Interest to Special Groups". It points out, in separate chapters, the ways in which war is detrimental to commerce, labor and agriculture. Further chapters indicate the adverse effects of war upon the youth of the world and upon womankind, while still others explain the work done by certain schools and churches in the interests of peace. Some of these chapters, unfortunately, are not very reassuring. The one on "Women and Peace", for example, leaves one with the confirmed impression that women throughout the world are all for peace while there is peace, but that they are just as heartily for war as soon as war breaks out. The third part of the volume discusses certain influences making for or against world peace. The chapters describe, on the one hand, such instrumentalities as the League of Nations, the World Court and the Kellogg Pact; and on the other, imperialism, armaments, war debts and reparations. There is also a rather weak chapter on "What War Is", and a better one on "What War Costs". Finally, Part IV consists of a ninety-five-page chapter on "What You Can Do for Peace". This section explains in detail how such agencies as libraries, women's clubs, churches, summer camps, motion pictures, radio, public discussions and schools can be utilized to help the world peace movement. The schools in particular, of course, rank high as media for education in world-mindedness and world-friendship. Miss Boeckel also shows that there is plenty that the individual can do toward fostering a spirit of international good will and peace. This chapter is the most original and the most useful in the volume. *Between War and Peace* should take rank as the best and most complete popular manual of information on the progress and possibilities of peace and the pacific settlement of international disputes that has yet been published. It presents a clear guide to conduct for all such individuals as may be willing to have a hand in molding public opinion to the point where it will force the governments of the world to keep peace on earth.—WALTER C. LANGSAM, Columbia University.

In his book *International Trade in Staple Commodities* (New York, McGraw-Hill Book Company, 1928; viii, 570 pp. $5.00) Dr. Edward Ewing Pratt has made a decided contribution to literature on foreign trade. Almost all of the texts that have been published within the last decade have dealt with the technical aspects of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

exporting and importing or with merchandising policies in selling goods to foreign markets or buying for import into the United States. Hitherto only government bulletins have issued information from time to time dealing with the marketing problems affecting specific commodities. Dr. Pratt has chosen as the field for his work a large group of staples which are dealt in daily in all of the principal markets of the world. Among these commodities are some produced only abroad and which the United States must import. Dr. Pratt lays as a foundation for his merchandising discussions a background of commercial geography and statistics of production, distribution and consumption. He then discusses in detail the actual operation of buying these commodities both as to local trading at the source and buying in the consuming centers. He also describes fully the functions of producers, middlemen and consumers in their places in the merchandising chain. Local trading and financing customs in each of the industrial centers of the world are outlined as they arise in dealings in each of the commodities under review. All of the products are traded in extensively in several markets. Nevertheless trade customs vary not only as to locality but also among the commodities. A study of each product is essential and broad merchandising principles must be supplemented by research into the various products. The book indicates that Dr. Pratt has made a thorough study of his subject. The chapters dealing with commodities with which the reviewer is personally familiar show that the information that has been compiled is accurate and of value to merchants engaged in foreign trade and to students thereof. The book is written in an interesting manner and should form a valuable adjunct to a business library.—MORRIS S. ROSENTHAL, Columbia University.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED